



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO 374 OF 2016**

**DORIS KEMUNTO ONSOMU AND JOEL**

**BUFFORD OUKO NTABO** ( suing as the personal representatives of the  
estate of **CHARLES ONSOMU BEN NTABO**).....**PLAINTIFFS**

**VERSUS**

**NELLY CHEPKOECH KEBENEY** ( sued as the personal  
representative of the estate of **PAULINE**

**CHEPKORIR KIPREN**).....**DEFENDANT**

**RULING**

***(Application for injunction; plaintiffs being personal representatives of a purchaser of land; the vendor also now deceased; personal representative of the vendor now scouting for buyers for the same land; material tabled showing that the late vendor and purchaser had a sale agreement and the transfer instruments were duly executed but not registered; no response by defendant to the application; plaintiffs demonstrating a prima facie case; application for injunction allowed)***

1. The plaintiffs in this case are the personal representatives of one Charles Ben Onsomu Ntabo (deceased). They filed this case on 14 September 2016, seeking orders inter alia that the defendant, who is the administrator of the estate of one Pauline Chepkorir Kipren (deceased), be compelled to transfer the land parcel Nakuru/Ngongongeri/1115 (the suit land) to the plaintiffs.

2. It is the case of the plaintiffs that the late Ntabo, on 3 May 2005, entered into a sale agreement with the late Pauline through which the late Ntabo purchased the suit land at a consideration of Kshs. 320,000/= which it is said was fully paid. It is averred that thereafter consent of the Land Control Board was sought and obtained and the vendor executed the requisite transfer form and surrendered the title deed to the purchaser. On 22 December 2005, the transfer instruments were lodged at the District Land Registry of Nakuru for registration but the same were not registered since in the year 2006, the Government imposed a general ban and restricted any dealings on all parcels of land falling within Ngongongeri registration area.

3. The vendor soon thereafter died on 13 April 2006 before the transfer could be effected. In the year 2007, the purchaser went to register the transfer but was advised to avail the vendor or personal representative of her estate. Unfortunately, in May 2007, the purchaser also died. In the meantime, the

plaintiffs assisted the defendant to procure Letters of Administration for the estate of the late vendor and she was duly issued with a grant on 23 June 2008. In the year 2008, the Government again reinstated the ban restricting dealings on land in Ngongongeri area which it is said is still in place. However, on 13 June 2016, the defendant came into the land with prospective buyers who were keen to purchase the said land. On being asked why she was scouting for buyers, the defendant became uncooperative and that is when the plaintiffs opted to file suit.

4. Together with the plaint, the plaintiffs filed an application for injunction, seeking to restrain the defendant from the suit land pending hearing and determination of this case. It is that application for injunction which is the subject of this ruling.

5. Despite being served, the defendant has not entered appearance and neither has she responded to the application. The only material before me is therefore that supplied by the plaintiffs.

6. I have combed through the material. I have seen a copy of the sale agreement dated 3 May 2005 between the late Ntabo and the late Pauline. I have also seen a copy of the transfer instrument which appears to have been duly executed by both vendor and purchaser. It does seem that the parties were keen to have the sale agreement fully executed and to have the land transferred to the late Ntabo. It is unfortunate that both vendor and purchaser died soon after signing the agreement and instrument of transfer.

7. I have also seen a copy of grant of letters of administration issued to the defendant in respect of the estate of the late Pauline, the vendor in the transaction. There is no question that she is the person now in control of the estate of the late vendor and if any orders are to be sought in respect of the suit property, then she is the person in charge. The suit is therefore properly brought against her. She has not filed anything to explain why she ought to be allowed to dispose of the property to the detriment of the plaintiffs.

8. I am of the opinion, after assessing the material before me, that the plaintiffs have established a prima facie case with a probability of success. If I do not allow the application for injunction, there is a risk that the suit land may be sold which will occasion the plaintiffs irreparable loss. The plaintiffs deserve protection until this case is heard and finalized. I therefore allow this application for injunction. I issue an order barring the defendant and/or her servants/agents/assigns, or any person acting under her behest from entering, being upon, utilizing or in any other way interfering with the plaintiffs' possession of the land parcel Nakuru/Ngongongeri/1115. I also issue an order stopping the defendant from selling, offering for sale, charging, leasing, or in any other way entering into any disposition over the land parcel Nakuru/Ngongongeri/1115 until this suit is heard and determined. In addition, I issue an order of inhibition, inhibiting the registration of any disposition in the register of the land parcel Nakuru/Ngongongeri/1115 until this case is determined or until further orders of this court.

9. The plaintiffs shall also have the costs of this application.

10. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 28<sup>th</sup> day of March 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of :**

No appearance on the part of M/s Kefa Ombati & Company Advocates, for the plaintiff .

Defendant has not entered appearance :absent

Court assistant : Nelima

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**