



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 73 OF 2017

MARGARET WANJIKU WAINAINAPLAINTIFF

VERSUS

LUCIA WANGARI MBUGUA.....DEFENDANT

RULING

(An application for injunction; prima facie case established; damages would not compensate the applicant; application allowed)

1. The plaintiff filed this suit on 27th February 2017. In the plaint dated 23rd February 2017, she seeks judgment against the defendant for:

- a) *An order directing that land parcel plot NAIVASHA/MWICHIRINGIRI BLOCK 4/23061 be transferred from the defendant to the plaintiff and in default the Deputy Registrar of the Honourable Court to cause transfer on behalf of the defendant.*
- b) *An injunction order restraining the defendant from interfering, disrupting, trespassing, encroaching, dealing including occupying, erecting of illegal structures or buildings or doing anything whatsoever adverse to the plaintiff's interests, in plot NAIVASH/MWICHIRINGIRI BLOCK 4/23061.*
- c) *Costs of the suit plus interest hereof.*

Simultaneously with the plaint, the plaintiff also filed notice of motion dated 23rd February 2017 wherein she seeks the following orders.

1. *[Spent].*
2. *[Spent].*
3. *THAT the defendant/respondents, their agents associates, employees, servants and or any other person be and are hereby restrained from interfering, disrupting, trespassing, encroaching, dealing including occupying, erecting of illegal structures or buildings or doing anything whatsoever adverse to the plaintiff's interests, in NAIVASHA.MWICHIRINGIRI BLOCK 4/23061 [sic] pending the hearing and determination of the suit herein.*
4. *THAT costs of the application be provided for.*

3. The application is supported by an affidavit of the plaintiff sworn on 23rd February 2017 and filed in court on 27th February 2017. The plaintiff deposes that she is the beneficial owner of NAIVASHA.MWICHIRINGIRI BLOCK 4/23061 [sic] which she purchased from the defendant's husband through a sale agreement 26th May 2004. A copy of the said sale agreement is annexed to the affidavit but it is in Kikuyu language and there is no translation.

4. The plaintiff further deposes that the vendor passed away before transferring the property to the plaintiff. Following the vendor's death, the defendant refused to transfer the property to the plaintiff and instead started subdividing the land. The plaintiff therefore prays for the orders sought in the application.

5. When the application came up for *inter parte* hearing on 9th March 2017, there was no appearance for the defendant and no response had been filed by the defendant to the application. Being satisfied by an affidavit of service on record that the defendant was served, I allowed the application to proceed. Counsel for the plaintiff relied entirely on the application and supporting affidavit and urged the court to allow the application.

6. I have considered the application and counsel's submissions. The application is unopposed and there is no evidence to controvert what has been put before the court by the plaintiff. I am therefore satisfied that the plaintiff has established a prima facie case with regard to her interest in the suit property. Even though no translation of the sale agreement has been availed, there is evidence on oath from the plaintiff that she purchased the suit property. I am equally satisfied that unless an injunction is granted, the plaintiff may suffer damage that may not be compensated by an award of damages.

7. In the circumstances, I grant the plaintiff an injunction restraining the defendant, her agents associates, employees, servants and or any other person acting on her behalf from interfering, disrupting, trespassing, encroaching, dealing with, erecting of illegal structures or buildings or doing anything whatsoever adverse to the plaintiff's interests, in NAIVASHA/MWICHIRINGIRI BLOCK 4/23061 pending the hearing and determination of this suit. Costs to the plaintiff.

Dated, signed and delivered in open court at Nakuru this 21st day of April 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Kisila holding brief for Mr. G.N. Kimani for the plaintiff

No appearance for the defendant

Court Assistant: Gichaba