



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**

**E&L 96 OF 2017**

**ZENAH JEPCHIRCHIR:.....1<sup>ST</sup> PLAINTIFF**

**SOPHIA JEPTOO:.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**ALI ISAAC GETOGORO:.....DEFENDANT**

**RULING**

**INTRODUCTION**

This ruling is in respect of an application for a temporary injunction which was brought by way of a Notice of Motion dated 7<sup>th</sup> March, 2017 under Certificate of Urgency seeking for orders:

1. THAT the County Land Registrar Uasin Gishu County be restrained from dealing with the register of all that parcel of land known as L.R No. ELDORET MUNICIPALITY/BLOCK 21 (KING'ONG'O) 4074 measuring approximately 1/8 of an acre pending the hearing and determination of this application inter-parties.
2. THAT a temporary injunction do issue restraining the Defendant, his servants, agents and/or assigns from in any way dealing and/or interfering with the 1<sup>st</sup> Plaintiff's legal title of 1/8 of an Acre comprised in L.R NO. ELDORET MUNICIPALITY/BLOCK 21 (KING'ONG'O) 4074 pending the hearing and determination of this application inter-parties and thereafter the main suit.
3. THAT a permanent injunction do issue restraining the Defendant, his servants, agents and/or assigns from in any way dealing and/or interfering with the 1<sup>st</sup> Plaintiff's legal title of 1/8 of an Acre comprised in L.R NO. ELDORET MUNICIPALITY/BLOCK 21 (KING'ONG'O) 4074 pending the hearing and determination of the main suit.
4. THAT Costs of this application be provided for.

The application is supported by ten grounds and a supporting affidavit of ZENAH JEPCHIRCHIR sworn on 7<sup>th</sup> March 2017.

**Plaintiff's Case**

It was the plaintiff's case that she is the registered owner of 1/8 of an acre within LR. NO. ELDORET MUNICIPALITY/BLOCK 21(KINGONGO) 4027. She annexed a copy of the title. She averred that the suit property was transferred to her by her daughter the 2<sup>nd</sup> plaintiff in exchange for money she had

advanced her while studying for her undergraduate and postgraduate studies.

The plaintiff further stated that her daughter was married to the defendant but their marriage has broken down and the defendant has threatened to transfer the suit property to 3<sup>rd</sup> parties. The plaintiff annexed a sale agreement and an Acknowledgement showing that they had bought the land jointly with the defendant in the plaint but not in the application. She prays for preservatory orders until this suit is heard and determined.

### **Defendant's Case**

In a replying affidavit dated 17<sup>th</sup> March 2017, the Defendant opposed the application stating that the said suit land is matrimonial home having bought it jointly with the plaintiff. The defendant annexed a copy of the sale agreement and the acknowledgement to oppose the application. The defendant has questioned the transfer of the land to the 1<sup>st</sup> plaintiff without his consent or knowledge. He further stated that there is an ongoing Divorce case Civil Suit No 14 of 2016 before the Kadhi's Court which is yet to be determined. He urged the Court to dismiss the application.

### **Submissions by both Counsels**

Both Counsels filed their submissions to support their clients' cases and they relied on the principles of granting interlocutory injunctions as per the famous case of Giella Vs Cassman Brown. The Plaintiff's counsel submitted that the plaintiff had met the threshold for granting injunctive relief. The Defendant's Counsel however submitted that the plaintiff had not proved a *prima facie* case with a probability of success. He relied on 3 authorities to support his submission.

### **Analysis**

I have considered the plaintiff's application together with the supporting documentation. I have also considered the submissions by both Counsels in support and opposition of the application and I have come to the following conclusion.

That the issues for determination are whether the plaintiff has established a *prima facie* case with a probability of success, that she would suffer irreparable loss which may not be compensated by an award of damages and finally if the court is in doubt, it may decide on a balance of convenience.

It is not denied that the 1<sup>st</sup> plaintiff is the mother-in law of the defendant and that the 2<sup>nd</sup> plaintiff is the estranged wife of the defendant. It is also clear that the plaintiff and the defendant bought the suit land jointly as per the sale agreement and the acknowledgment though the plaintiff chose not to annex it to the affidavit in support of her application. She only filed it as a document to rely on in the main suit. I wonder why she did not find it prudent to annex it.

I also noted that the 1<sup>st</sup> plaintiff's statement contradicts the 2<sup>nd</sup> plaintiff's source of money for the purchase of the suit plot. The 2<sup>nd</sup> plaintiff stated that she got a loan facility from Cooperative bank while the 1<sup>st</sup> plaintiff stated that she had advanced her daughter Kshs. 500,000/ for the purchase of a plot while she was undertaking her undergraduate and postgraduate studies.

It is further not clear how the 1<sup>st</sup> plaintiff the mother in law of the defendant who was not a party to the sale agreement was registered as an owner without the consent of the defendant. The plaintiffs have also not produced any evidence before the court to show that the defendant is in the process of disposing of the land which is not registered in his name. The land is registered in the 1<sup>st</sup> plaintiff's name who is not in occupation as it is alleged that she lives in Chebarbar in Nandi County. I therefore find that the plaintiffs have not established a *prima facie* case with a probability of success. The rest of the issues as to the legality of the transfer of the suit land to the 1<sup>st</sup> plaintiff can only be unearthed during the full hearing.

On the issue of whether damages would be adequate compensation for the plaintiffs, the suit land is 1/8 of an acre, the amount for which it was purchased is ascertainable and any appreciation of that suit land in terms of value can be done by a qualified valuer. I therefore find that damages can be adequate compensation.

On the final limb, as to where the balance of convenience lies, from the above analysis I find that the balance of convenience cannot tilt in favour of the plaintiffs. Interlocutory injunctions are equitable remedies which must be granted judiciously. It is the court's discretion to grant or reject an application for interlocutory injunction. Parties should also approach the court with clean hands and not try to defeat justice.

I have considered the relevant authorities quoted by Counsels and others in respect of grant of interlocutory injunctions and I find that this is not a case that merits the grant of such reliefs.

The upshot is that the plaintiff's application dated 7<sup>th</sup> March 2017 is hereby dismissed.

This case being a matter involving daughter, son in law and mother in law, I order that each party to bear its own costs.

Parties to comply with order 11 within 30 days and set down the main suit for hearing.

**Dated and delivered at Eldoret this 11<sup>th</sup> day of April, 2017**

**M.A ODENY**

**JUDGE**