



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 84B OF 2015**

**JOSEPHAT MUCHIRI RUGANO**

**BENSON NYAGA RUGANO (Both suing as Legal**

**Representatives of the Estate**

**of the late RUGANO KABURIA.....PLAINTIFF**

**VERSUS**

**KIRINYAGA COUNTY GOVERNMENT.....DEFENDANT**

**RULING**

On 27th July 2015, the plaintiffs suing as the legal representatives of the Estate of **RUGANO KABURIA** (deceased) filed this suit seeking judgment against the defendant in the following terms:

***(a) Cancellation of title No. KABARE/NYAGATI/780 reverting the same to the Estate of the deceased or in the alternative, the defendant to pay for the current market value after valuation by both respective parties registered valuer whose valuation report should be filed in this cause for determination of value.***

***(b) General damages.***

***(c) Any other relief the Court may deem just and expedient.***

***(d) Costs of the suit.***

The claim was premised upon pleadings that sometime on or before 7th September 1999, the defendant registered land parcel No. KABARE/NYANGATI/780 (the suit land) into its names without compensating the deceased who passed away in February 2000. Then in March 2015, the plaintiffs were informed that the defendant was claiming the suit land yet that is where they reside. That the defendant acquired the suit land without their knowledge. They therefore filed this suit.

Simultaneously with that plaint, the plaintiffs filed an application seeking temporary injunction to restrain the defendant from interfering with their occupation of the suit land. Temporary orders were granted on 20th July 2015 and the matter was listed for inter-parte hearing on 17th September 2015. However, for various reasons, including an intimation on 30th September 2015 and on 1st December 2015 that a settlement was being explored, the application was not canvassed and the parties kept seeking more time and consenting to the extension of the exparte orders.

Meanwhile, on 1st September 2015, the plaintiff appears to have decided that the suit was filed out of time and therefore filed an application seeking extension of time and that the suit already filed herein be deemed as filed within time. For some reasons however, perhaps including the fact that the parties had been trying to negotiate, that application has not been prosecuted to-date and both parties appear to have forgotten about it. Instead, when the parties appeared before me on 19th April 2016, they only addressed me on the application for temporary injunction dated 27th July 2015 which they agreed should be canvassed by way of written submissions and even after that, they took their time filing the same. Parties must learn to keep time lines if the Court is to deliver justice expeditiously.

The application that is before me therefore is the one dated 21st July 2015 and filed herein on 27th July 2015 seeking a temporary injunction in the terms set out therein pending the hearing of this suit. Submissions have been filed on the said application as directed.

It is clear from the plaintiffs' own application dated 1st September 2015 and specifically their supporting affidavit that this suit has been filed out of time. That is their own confession and that is why they have filed the application seeking leave to file it out of time. However, that application has not been prosecuted and the leave sought granted. The import of that is that there is therefore no suit before me upon which any temporary orders of injunction pending hearing of the suit can be granted. **Order 40 Rule 1 of the Civil Procedure Rules** on which the application for injunction is founded provides as follows:

**“Where in any suit it is provided by affidavit or otherwise –**

***(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or***

***(b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit.***

***The Court may by order grant a temporary injunction to restrain such act or make such other orders for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the Court thinks fit until the disposal of the suit or until further orders”.*** Emphasis added

An application for temporary injunction can therefore only be made where there is a suit pending determination by the Court. It is the pendency of the suit that warrants the grant of a temporary injunction and without it, the Court cannot exercise its discretion in favour of the applicant. This issue was considered by the Court of Appeal in the case of **GODFREY NDUNGU THEURI VS LAW SOCIETY OF KENYA C.A CIVIL APPEAL No. 5 of 1985 (1988) e K.L.R** where the Court said that where there is no plaint, Originating Summons or other pleading filed, a party cannot “***set on foot a competent action on which he could base the claim for the grant of interim relief***”.

In this case therefore, the plaintiffs having filed a suit which they later decided was filed out of time and having filed an application for extension of time within which to file the suit which application is yet to be canvassed, it follows that there is no proper plaint before this Court on which an application for temporary injunction can be based.

The Chamber Summons filed herein on 27th July 2015 is hereby struck out with costs and the orders issued on 29th July 2015 and extended thereafter are hereby discharged.

**B.N. OLAO**

**JUDGE**

**19<sup>TH</sup> MAY, 2017**

**Ruling dated, delivered and signed in open Court this 19<sup>th</sup> day of May 2017**

Mr. Mwangi for Mr. Kahuthu for Plaintiffs present

Mr. Muchira for Mr. Kiarie for Defendant present.

**B.N. OLAO**

**JUDGE**

**19<sup>TH</sup> MAY, 2017**