

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

MILIMANI LAW COURTS

ELC. CASE NO. 1584 OF 2014

LEAH WANJA NJENGA..... 1ST PLAINTIFF

MERCY NJERI NJENGA.....2ND PLAINTIFF

(And on behalf of 4 siblings namely; **Irene Mumbi Njenga, Grace**

Wairimu Njenga, Catherine Wahu Njenga and Kesiah Wanjiru Njenga)

VERSUS

EMMA WANJIKU MAREKIA.....1ST DEFENDANT

DANCAN KAMAU MWATHA.....2ND DEFENDANT

CHIEF LAND REGISTRAR-KIAMBU.....3RD DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 22nd December 2014 in which the Plaintiffs/Applicants seek for an order of temporary injunction restraining the Defendants/Respondents from alienating, transferring, trespassing, harassing, intimidating, threatening or otherwise howsoever interfering with the Plaintiffs/Applicants' quiet enjoyment, possession and occupation of the parcels of land known as Kiambaa/Ruaka/2512 and Kiambaa/Ruaka/2520 (hereinafter referred to as the "suit properties") pending the hearing and determination of this suit and that the Officer Commanding Station Karuri Police Station do ensure compliance with this order. They also sought that an order of inhibition be issued and registered in the respective land registers for the suit properties.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the 1st Plaintiff/Applicant, Leah Wanja Njenga, sworn on 22nd December 2014 in which she averred that she and her 5 sisters, namely Mercy Njeri Njenga, Irene Mumbi Njenga, Grace Wairimu Njenga, Catherine Wahu Njenga and Kesiah Wanjiru Njenga have beneficial interests in the suit properties which comprise part of the estate of their late father, Peter Njenga Marekia. She also stated that they were born on the suit properties and that they continue to reside there to date. She pointed out that the suit properties lie adjacent to each other forming one large parcel of land. She averred further that a Certificate of Confirmation of Grant was issued in Succession Cause No. 66 of 2003 at Kiambu Senior Principal Magistrates Court on 15th December 2005 in which their only brother Robert Marekia Njenga was named as the Administrator. She added that pursuant to that Confirmation of Grant, the suit properties devolved to their said brother to hold on his own behalf and in trust for her and her 5 sisters. She further averred that her said brother unfortunately passed on the 10th December 2008 leaving them and his family comprising of his wife (the 1st Defendant) and two children. She averred further that the 1st Defendant subsequently forged a High Court order namely a Confirmation of Grant of Letters of Administration over her late husband's estate and proceeded to have the suit properties registered in to her name by way of transmission. She further averred that the 1st Defendant proceeded to fraudulently transfer one of the

suit properties namely Kiambaa/Ruaka/2512 to the 2nd Defendant who has threatened to evict them therefrom. She added that they only came to learn of the forgery by the 1st Defendant when they were summoned by the Area Chief who informed them that the suit properties do not belong to them. She also stated that they were able to discover the forged documents which led to the arrest of the 1st Defendant and criminal charges were lodged by the CID and there is Criminal Case No. 2942 of 2012 against the 1st Defendant ongoing. She also stated that the 2nd Defendant, who has in his possession a title deed to one of the parcels, has begun to harass, intimidate, threaten, provoke and interfere with their occupation thereof. She concluded by requesting this court to allow this Application.

In response to this Application, the 2nd Defendant raised a Preliminary Objection dated and filed on 3rd February 2015 to the effect that the Applicant has no *locus standi* to file the suit and that the suit is a non-starter, is wholly incompetent and is an abuse of the due process of the court. The 2nd Defendant further filed his Replying Affidavit sworn on 19th March 2015 in which he averred that he is an innocent purchaser of the parcel of land known as Kiambaa/Ruaka/2512 for value without notice of any defect from the 1st Defendant. He added before entering into a sale agreement with the 1st Defendant, he conducted due diligence and was fully convinced that the parcel of land was registered in the name of the 1st Defendant. He averred that he paid a consideration of Kshs. 7 million to the 1st Defendant for the parcel of land. He then stated that the transfer was duly registered at the Lands Office in Kiambu and a title deed issued to him. He denied provoking the Plaintiffs/Applicants stating that he had only called for dialogue with the 1st Defendant and her family so that an amicable solution can be obtained.

The main issue for determination here is whether or not to grant the Plaintiffs/Applicants an order of temporary injunction directed at the Defendants in respect of the suit properties. The Plaintiffs claim to have a beneficial interest in the suit properties which they aver belong to the estate of their late father. The Plaintiffs' claim is primarily in respect of the estate of a deceased person. The law applicable in such situations is the Law of Succession Act which contains the law relating to intestate succession and the administration of estates of deceased persons. It is my opinion that this court, being the Environment and Land Court, has no jurisdiction to hear this suit. It is the Family Division of the High Court that has jurisdiction to hear and determine this suit. Accordingly, this suit is hereby transferred to the Family Division and is to be placed before the Presiding Judge of that Division on the date this court shall fix.

It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF MAY 2017.

MARY M. GITUMBI

JUDGE