



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT**

**AT MILIMANI**

**ELC CASE NO.873 OF 2016**

**JANE WANJERI MURIU(SUING AS THE PERSONAL ADMINISTRATOR OF THE ESTATE  
OF**

**EVANS MURIU CHEGE.....PLAINTIFF/APPLICANT**

**=VERSUS=**

**LUMMEN ENTERPRISES.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**LUCIA WANJIKU KAMAU .....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**GEORGE GITAU.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

1. The Plaintiff/Applicant is the administratrix of the estate of the late Evans Muriu Chege (deceased) who had shares in Lummen Enterprises the second respondent herein. By virtue of the deceased's shareholding in Lummen Enterprises, the deceased was allocated three plots namely:- **Plot No. 16/7340/98, Plot No. 17/7340/98 and Plot No. 23/7340/98.**
2. The second respondent is associated with the first respondent. The third respondent who also describes himself as Jackson Gitau Ngichiri is a Purchaser of Plot No. 23/7340/98 from the first respondent.
3. The applicant filed a notice of motion dated 26<sup>th</sup> July 2016 in which she seeks the following reliefs:-
  - (a) Spent
  - (b) Spent
  - (c) **That this honourable court be pleased to issue an order of temporary injunction against the respondents b themselves, agents, workers, servants or anybody claiming through them from further construction, building or depositing further building materials on Plot No. 16/7340/98, Plot No. 17/7340/98 and Plot No. 23/7340/98 pending the hearing and determination of this suit.**
  - (d) **That the OCS area police station do supervise and ensure compliance of these orders.**
  - (e) **That the respondents be condemned to pay costs of this application.**

4. The applicant contends that the deceased was allocated **Plot Nos. 16/7340/98, 17/7340/98** and **Plot No. 23/7340/98** as shown in Share Certificate Nos. 50, 52 and 206 issued by the first respondent respectively. In July 2016, she visited the suit plots where she found construction going on. On inquiring as to who was involved, she found out that it is the first respondent who had colluded with the second and third respondents who were putting up the structures. She tried to ask those concerned to halt the constructions but that they declined forcing her to file the present application.

5. The applicant's application is opposed by the first and second respondents through a replying affidavit sworn by the second respondent on 31<sup>st</sup> October 2016. The first and second respondents concede that indeed, the deceased had been allocated the three suit plots and given Share Certificates. It reached a time when the first respondent wanted to have the main title subdivided so that shareholders can get individual titles.

6. The first and second respondents tried to contact all shareholders to come forward and make payments so that the sub division process could be carried out. They were unable to locate some of the shareholders including the deceased. They were forced to advertise in the print and electronic media asking those affected to come up in vain. As the first and second respondents had been faced with huge bills from the surveyors, they were forced to sell the properties belonging to the deceased. One of the deceased's properties was sold to the third respondent who has put up a storey building which is complete.

7. The third respondent has opposed the applicant's application based on a replying affidavit sworn on 15<sup>th</sup> September 2016 and grounds of opposition filed in court on 15<sup>th</sup> September 2016. The third respondent contends that the application herein was served upon his workers at the construction site. That though he is not named as a defendant, he decided to file a response because he saw that one of the buildings in issue belongs to him. That he bought **Plot No. 23/7340/98** from the first respondent. That since then, he has put up a building on the plot which is complete and that tenants have entered the plot. That he bought the plot without notice of any issues regarding the same. That no one came to stop him for all the time he was constructing.

8. I have carefully considered the applicant's application as well as the opposition to the same by the respondents. There is no contention that the three plots belonged to the deceased. There is also no contention that in one of the plots, the third respondent has put up a building which is now complete. The third defendant/respondent bought the plot from the first respondent and the second respondent does not deny this fact.

9. The issue for determination in this case is whether injunction orders can be issued to affect all the respondents in this matter. It is trite law that an injunction can only be granted to restrain an event which has not occurred or to preserve a property until the suit is heard and determined. It cannot be granted where the event which it seeks to prevent has already taken place.

10. Though the second respondent claims that they sold all the three properties of the deceased, there is no evidence that that is the case. The only evidence which is not controverted is that it is the third respondent who bought one property and that he has put up a building which is complete. There is no evidence that the other two plots i.e. **Plot Nos.16/7340/98 and Plot No. 16/7340/98** have been sold. If the photographs annexed to the applicant's application are anything to go by, it is only one property which has been built up. The other two have not been built up.

11. There is need to preserve the two remaining properties until the suit herein is heard and determined. To this extent I find that it is necessary to issue an injunction restraining the first and second respondents by themselves, their agents, workers, servants or anybody claiming through them from carrying out further construction, building or depositing building materials on Plot Nos. 16/7340/98 and Plot No. 17/7340/98 pending the hearing and determination of this suit. The costs of this application shall be borne by the first and second respondents.

It is so ordered.

**Dated, signed and delivered at Nairobi on this 21st day of June, 2017.**

**E.O. OBAGA**

**JUDGE**

**In presence of:**

Mr. Kamata for Defendant's / Respondents

Court Assistant: Hilda