



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
ELC CASE NO.916 OF 2016

KAMAU GACHOKA.....PLAINTIFF/APPLICANT

VERSUS

MARY THAMI KAMAU.....1ST DEFENDANT/RESPONDENT

JOHN MAGARA MUKAMI.....2ND DEFENDANT/RESPONDENT

PAUL NGUGI KAMAU.....3RD DEFENDANT/RESPONDENT

GODFREY MWAURA KAMAU.....4TH DEFENDANT/RESPONDENT

RULING

1. The Plaintiff/Applicant is the husband of the first respondent whose children are the third and fourth respondents. The second respondent is said to be a nephew of the applicant though in the Complaint, the applicant claims that he is his son from the first respondent.
2. The applicant is the registered owner of **LR Nos. Ndumberi/Ndumberi/3942, 3943 and 3944** all of which are sub divisions of **LR No. Ndumberi/Ndumberi/2420**. Before and after the subdivisions, the applicant had filed suits in court seeking to remove cautions placed on the mother title before subdivision and on the sub-divisions. In the two suits filed, the courts ruled in his favour by ordering removal of the cautions which had been placed at the behest of the respondents.
3. On 29th July 2016, the applicant filed a notice of motion in which he sought both temporary and mandatory injunction orders against the respondents. The applicant contends that he is a polygamous man who has three wives. That the first respondent is his second wife. That he intends to share out the suit properties amongst his wives but that the respondents do not want him to do so. That the intention of the respondents is to disinherit the other houses probably when he is not there.
4. The respondents have opposed the applicant's application through a replying affidavit sworn on 27th September 2016 and a further affidavit sworn on 27th October 2016 by the first respondent. The first respondent contends that she is the only wife of the applicant and that the applicant wants to evict them from the suit properties so as to sell the same. That the applicant got the suit properties from his late father and that besides these three properties, the applicant was given other parcels from the estate of his father which he has sold without consent of the family.
5. I have carefully considered the applicant's application as well as the opposition to the same by the

respondents. The principles for grant of temporary injunction are well settled. An applicant must demonstrate that he has a prima facie case with probability of success. For mandatory injunction, it can only be granted if the case is a straight forward one which can be decided at once without waiting for a full trial of the entire case.

6. In the instant case, the applicant stated that he has sub divided his land into three portions which he intends to share out to his three wives. The applicant admits that the first respondent and his children are part of his family. The applicant has not indicated which portion of his three parcels are to go to which family. Courts do not give blanket orders where the applicant is not specific as to what he wants. A look at the prayers in the application shows that the applicant wants the respondents compelled to cater for costs of transfer of the parcel he intends to give to them. He does not specify which of the three parcels he intends to give to the respondents. The applicant also wants the court to give an order compelling the respondents to vacate their respective parcels upon successful transfer of a parcel he intends to give them. Again, he is not specific on where the respondents are currently residing and where he wants them to move to.

7. There is no one contesting his ownership of the three parcels. If there was proper sub-division carried out the surveyors must have marked the boundaries of the three parcels and I do not understand how the applicant can again claim that he is sending a surveyor to put beacons in place. The applicant is not being candid in this matter. He has not denied that the second respondent is son to his sister. The applicant in the plaint claims that the second respondent is his son from the first respondent. There is no mandatory order which can be given in the circumstances. This case has to be tried at the main hearing.

8. It is apparent that the applicant wants to evict the respondents from the three suit properties and that is why he is seeking police assistance. This is not the purpose of a temporary injunction which is meant to preserve the property until the dispute is heard and determined. There is no danger of alienation of the three properties by the respondents. I find that the applicant's application lacks merit. The same is hereby dismissed with no order as to costs as the parties herein are family members.

9. It is so ordered.

Dated, signed and delivered at Nairobi on this **20th** day of **June**, 2017

E.O. OBAGA

JUDGE

In presence of

Mr. Ngeresa for Mr. Mburu for Plaintiff

Court Assistant - Hilda