



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAKURU

CASE No. 152 OF 2017

JAMES KARIUKI NGUNJIRI.....1ST PLAINTIFF

DAVID MIRARA NGUNJIRI.....2ND PLAINTIFF

VERSUS

JOSEPH NDUNGU NGUNJIRI.....DEFENDANT

RULING

(An application for injunction to restrain the defendant from dealing with suit properties; the applicants alleging suit properties are part of the estate of applicants' deceased parents; applicant admitting that defendant is registered owner of one of the suit properties; no proof of ownership of other properties by the deceased; application dismissed)

1. This ruling is in respect of plaintiffs' Notice of Motion dated 4th April 2017. The application is brought under Order 40 rules 1 and 2 of the Civil Procedure Rules and is supported by an affidavit sworn jointly by the plaintiffs. The plaintiffs seek the following orders:

1. *(Spent).*

2. *(Spent).*

3. *The defendant by himself, servants and/or agents are restricted (sic) leasing, transferring or in any other manner whatsoever dealing with all those plots known as Mau Summit/Molo Block 1/140, Mutirithia/Mau Summit Block 1/13, plot No's 302 and 562 pending hearing and determination of this suit.*

4. *THAT costs of this application be paid by the defendant.*

2. Though served with the application, the defendant neither filed a response nor attended the inter parte hearing of the application. Consequently, the application was heard unopposed. Counsel for the plaintiffs relied entirely on the application and supporting affidavit and urged the court to allow the application.

3. The supporting affidavit is scanty. The plaintiffs depose that all the properties referred to in the suit are part of the estate of the plaintiff's parents and that the defendant has had himself registered as the proprietor of Mau Summit/Molo Block 1/40. That the defendant has carried out construction on properties of the deceased and has refused to stop despite demands. The plaintiffs therefore urge the court to grant

the orders sought.

4. I have considered the application, supporting affidavit and submissions by counsel. The supporting affidavit is bare and does not put before the court adequate material to enable the court determine if a case has been made for the granting of an interlocutory injunction.

The properties in dispute are said to be part of the estate of the plaintiffs' deceased parents. The names of the said parents are not given. Save for Mau summit/Molo Block 1/140 which is registered in the name of the defendant, details of the other properties which are said to constitute the estate of the deceased are not given. There is no proof that such properties were owned by the deceased. The court is not also told whether any administrator has been appointed in respect of the deceased's estate pursuant to the Law of Succession Act. As regards Mau summit/Molo Block 1/140, I am not persuaded that I should issue an injunction against the defendant who is the registered proprietor.

5. In view of the foregoing, I am not persuaded that the plaintiffs have a prima facie case with a probability of success. In the circumstances, I do not need to consider whether the other tests in **Giella v Cassman Brown & Co Ltd [1973] EA 358** have been established. Notice of Motion dated 4th April 2017 is dismissed. No order on costs.

Dated, signed and delivered in open court at Nakuru this 13th day of June 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Ikua for the plaintiffs/applicants

No appearance for the defendant/respondent

Court Assistant: Gichaba