



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**CIVIL CASE NO. 520 OF 2017**

**(formerly Nairobi HCCC Environment and Land Division. ELC No. 268 of 2012)**

**MARY NJERI GATERO.....PLAINTIFF**

**VERSUS**

**TOWN COUNCIL OF KAJIADO.....1ST DEFENDANT**

**VERONICAH T. MAINGI.....2ND DEFENDANT**

**RULING**

The application before this court is a Chamber Summons by the Plaintiff dated 30th June, 2016 and filed on 1st July, 2016 brought pursuant to Section 68 of the Registered Land Act and Article 65 of the Constitution and all the other enabling provisions of the Law. The application is premised on the grounds that this case was filed in court on 17th May, 2012 and the 2nd Defendant has commenced putting up structures on the suit property and yet the case has not been heard and determined. The application is supported by the affidavit of MARY NJERI GATERO who is the Plaintiff herein where she deposes that this matter had actually been set down for hearing however to her great surprise she discovered that the 2nd Defendant/Respondent in total contempt of court and proceedings that are underway, commenced putting up structures on the suit property. She avers that the 2nd Respondent's action is a great injustice to her yet her father became the allottee of the disputed property on 11th August 1978 and she has adduced all relevant documentation to prove ownership of the said disputed land. She states that the 2nd Respondent is not interested in the due process of the law and unless restrained by the court, she will have built on the whole disputed property.

The application proceeded unopposed as the 1st and 2nd Defendants/Respondents who were served failed to file replying affidavit in opposition to the application. According to the affidavit of service, the Court notes that both the 1st and 2nd Defendants/Respondents were duly served.

The application proceeded unopposed on 4th May 2017 when Mr. Githuka who is the Counsel for the Plaintiff/Applicant first made an oral application to amend the Chamber Summons and stated that the Plaintiff was seeking restraining orders against the Defendants in line with prayers (b), (c) and (d) of the Chamber Summons. Further that the Plaintiff was seeking orders under Order 40 rule 1 (a), Order 51 rule 10 of the Civil Procedure Rules which require the applicant to indicate on the face of the application, under which provisions the application is being made, but the Plaintiff failed to do so and this is not a fatal error and should not be a ground for striking out the application. He submitted that he is relying on the three principles for granting an injunction as stated in the case of **Giella Vs Cassman Brown** and the case of **Mrao Ltd Vs First American Bank**.

He submitted that the Plaintiff had set out her case in the Complaint filed on 14th May 2012 where she was seeking declaratory orders that Plot No. 178 Majengo 'A' belongs to her, as she is the beneficiary of her late father Peterson Gatero. She attached the following documents to prove her claim: the Grant of Letters of Administration Intestate; Sale Agreement dated 21st July 1978 between Peterson Gatero and Wanjiru Wangai in respect of the plot in issue; Transfer Letter from the Ol Kejuado County Council dated 11th August, 1978 confirming plot no. 178 Majengo "A" had been transferred from Wanjiru Wangai to Peterson Gatero; Letter of Allotment dated 11th March, 2014 that confirms plot No. 178 Majengo belongs to Peterson Gatero; receipts in respect of payment of rates to the Kajiado County Government; Certificate of Official Search dated 20th July 2010 indicating Peterson Gatero is the proprietor of the suit parcel. The Plaintiff further filed a list of witnesses that included Anne Wamuyu, Peter Maina who witnessed the Sale Agreement on 21st July, 1978.

Mr. Githuka submitted that the Plaintiff had established a prima facie case to warrant the injunction sought. On the issue of irreparable loss, he submitted that the Plaintiff being a beneficiary of the late Peterson Gatero had followed all the due process seeking the court's protection and will hence lose the plot if the injunction sought is not granted as the 2nd Defendant has commenced construction thereon knowing fully well the matter is pending before court. She produced photos of the structures on the suit land.

On balance of convenience, he submitted that all parties should not interfere with the suit parcel of land until the issue of ownership is heard and determined by the court.

### **Issue and determination**

The Court notes that the only issue for determination is whether the Plaintiff is entitled to the injunctive orders sought pending the hearing and final determination of this suit.

The principles for granting of temporary injunctions were settled in the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358** as follows:

**"First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience."**

Bearing this principle in mind, it behoves this honourable court to interrogate whether the applicant has made out a prima facie case with a probability of success at the trial.

On the first issue, the Plaintiff has produced various documents to prove her claim over the suit land but the Defendants failed to file a replying affidavit nor produce any documentation to rebut this. The Court hence finds that the Plaintiff has established a prima facie case.

On the question of irreparable loss and damage, the Court notes that the parties had complied with Order 11 and the matter was pending for hearing. The 2nd Defendant however proceeded to commence constructing on the suit land as evidenced by the pictures produced, knowing fully well the matter was pending in court for hearing and final determination. The 2nd Defendant seems to have no respect for the judicial process and taken the law into her hands and these actions seems to be geared towards denying the Plaintiff a right to judicial process over the suit land. The Court finds that the Plaintiff will suffer irreparable loss and damage if the injunctive orders sought are not granted.

On a balance of convenience, the Court finds that the suit parcel of land should not be interfered with until the hearing and final determination of the suit.

Even though the Court notes that the Plaintiff's application dated 30th June, 2016 and filed on 1st July, 2016 and was brought pursuant to Section 68 of the Registered Land Act which have since been repealed, it is inclined to allow the oral application made by Mr. Githuka as there are triable issues raised by the Plaintiff and I will not want to dwell on technicalities at this juncture but order that the suit property Plot No. 178 Majengo be preserved and all parties including their servants and or agents be restrained from interfering with the suit parcel pending the hearing and final determination of the suit herein.

**Dated signed and delivered in open court at Kajiado this 27th day of July, 2017.**

**CHRISTINE OCHIENG**

**JUDGE**