



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC CASE NO. 268 OF 2016**

**MUPA OPARA ALIMA.....PLAINTIFF/APPLICANT**

**-VERSUS-**

**RAMA KOMBE.....1<sup>ST</sup> DEFENDANT**

**COUNTY GOVERNMENT OF MOMBASA.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiff/applicant has moved the Court seeking for an order that:

***“Pending hearing and determination of this suit, the 1<sup>st</sup> defendant, his agents, servants and employees be restrained by way of temporary injunction from trespassing, constructing, selling or in any way dealing with plot No 100 Miritini Settlement Scheme.”***

2. The applicant avers that she has lived on this land for more than 20 years. But at the time of allotment it was given to the 1<sup>st</sup> defendant. That the 1<sup>st</sup> defendant has sold their plot which adjoins the suit plot and is also threatening to sell the suit plot. The applicant deposed that she has nowhere to go if evicted and urged the Court to grant the order.

3. The application is opposed by both defendants. The 1<sup>st</sup> defendant denied the applicant has lived on this plot for over 20 years. He deposed that the applicant is married to Kaka Tsuma Ndarro their neighbor who was allocated Plot No 84. He annexed copy of the allotment letter for Kaka Tsuma. That the suit plot originally belonged to the 1<sup>st</sup> defendant’s father and the applicant’s complaints to the local adjudication committee were dismissed. The 1<sup>st</sup> defendant deposes that he has no intention of selling the suit plot. He also deposed that the applicant will not suffer any irreparable harm as they have their own plot allocated to her husband.

4. The parties filed written submissions which I have read and considered. For a party to enjoy injunctive relief, he/she must establish either of the three principles of prima facie case, irreparable harm that cannot be compensated in damages or when in doubt decide in whose favour the balance of convenience tilts. The applicant herein lives on the suit plot which has allotment letter bearing the name of the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant has stated on oath that he is not intending to sell the suit plot. The applicant also included the 2<sup>nd</sup> defendant in this suit. At this stage there are no orders she is seeking against the 2<sup>nd</sup> defendant therefore I will not delve into the submissions made by the applicant as regards the grounds of opposition filed.

5. On the basis that the 1<sup>st</sup> defendant admitted that the applicant settled on a portion of the suit property because their plot was located in an area that was not developed, an inference is drawn that the applicant settled on the suit plot with their permission. The applicant has not specified the mode the threats from the 1<sup>st</sup> defendant have been meted to her. I am however granting her the orders based on the principle of balance of convenience. She is in possession so the balance of convenience tilts in her favour to remain in possession pending determination of the suit. The cost of the application is ordered in the cause.

**Dated, signed & delivered at Mombasa this 12<sup>th</sup> day of JULY 2017**

**A. OMOLLO**

**JUDGE**