



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**CHUKA ELC CASE NO 273 OF 2017**

**ESTHER MUTHONI.....PLAINTIFF**

**VERSUS**

**KINYUA FREDRICK MUTEGLI.....1<sup>ST</sup> DEFENDANT**

**NANCY GATUNE KARERI.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. This application is dated 2<sup>nd</sup> August, 2017 and seeks orders:

1. That the application be certified as urgent and service of the application be dispensed with in the first instance.

2. That an order of temporary injunction do issue restraining the 1<sup>st</sup> defendants (sic) by himself or anybody acting on his behest or instructions from alienating, disposing, transferring, granting user, access or occupation to 3<sup>rd</sup> parties or in any way or manner whatsoever interfering with the full access, peaceful user and occupation of the jointly owned properties with the plaintiff, known as land parcels No. KARINGANI/MUIRU/4324, KARINGANI/MUGIRIRWA/2072, KARINGANI/MUIRU/1653, MAKAO HOLDINGS HOUSE G4 AND HOUSE H67 LOCATED AT RUAKA; MBUGUNI SETTLEMENT SCHEME PHASES ONE PLOT NO. 135 LOCATED AT MOMBASA without the consent or approval of the plaintiff in the interim basis pending interparty hearing and determination of the instance application.

3. That an order of temporary injunction do issue restraining the 2<sup>nd</sup> defendants acting by himself or anybody acting on her behest or instructions from trespassing, encroaching or in any way, form/manner whatsoever interfering with the full access, peaceful user and occupation of the plaintiff (sic) jointly owned properties known as land parcels No. KARINGANI/MUIRU/4324, KARINGANI/MUGIRIRWA/2072, KARINGANI/MUIRU/1653, MAKAO HOLDINGS HOUSE G4 AND HOUSE H67 LOCATED AT RUAKA; MBUGUNI SETTLEMENT SCHEME PHASES ONE PLOT NO.135 LOCATED AT MOMBASA, in the interim basis pending the hearing and determination of the instance application.

4. That Order 2 and order 3 above do issue as prayed for in the interim basis pending the hearing and determination of the main suit.

5. That the costs of the application be in cause.

2. The application is supported by the Affidavit of ESTHER MUTHONI, the applicant and has the

following grounds:

1. That the plaintiff and the 1<sup>st</sup> defendant are husband and wife having been legally married on the 8<sup>th</sup> August, 1998.
2. THAT the plaintiff is a co-owner/proprietor of the following properties, Land parcels No. KARINGANI/MUIRU/4324, KARINGANI/MUGIRIRWA/2072, KARINGANI/MUIRU/1653, MAKAO HOLDINGS HOUSE G4 AND HOUSE H67 LOCATED AT RUAKA; MBUGUNI SETTLEMENT SCHEME PHASES ONE PLOT NO.135 LOCATED AT MOMBASA with the 1<sup>st</sup> defendant having acquired them jointly during the subsistence of their marriage.
3. That the 1<sup>st</sup> defendant has locked the plaintiff out of all their jointly owned properties by denying her entry, access, peaceful user and or occupation for no justifiable reasons.
4. That the 2<sup>nd</sup> defendant who is stranger (sic) has trespassed encroached and or interred (sic) and continues to interfere with the free access, user and occupation of the plaintiff peaceful of her properties a fact that is detrimental to the plaintiff's proprietary rights to those properties.
5. That the 1<sup>st</sup> defendant has, alienated one of the suit lands, land parcels No. KARINGANI/MUIRU/4324 and allowed the 2<sup>nd</sup> defendant to trespass and encroach on the same without the consent or approval of the plaintiff who has proprietary interest over the same.
6. That if the orders of temporarily injunction sought herein are not granted to preserve the suit properties, the 1<sup>st</sup> defendant may alienate, dispose or transfer the same and the plaintiff's proprietary rights will be (sic) continue to be trampled upon and she will suffer irreparable loss and material damage as a result of the 2<sup>nd</sup> defendant (sic) continued trespass on her properties.
7. That the orders herein are sought for the interest of justice.

3. On 2<sup>nd</sup> August, 2017, the court was urged by the applicant's advocate to grant prayers 1, 2 and 3. The court was told that the applicant relied on the grounds on the face of the application and on the supporting affidavit sworn by the applicant on 2<sup>nd</sup> August, 2017.

4. From her affidavit, the plaintiff/applicant is pellucid that she is a resident of, Maryland in the United States. Her prayer, inter alia, seeks to restrain the 1<sup>st</sup> defendant from doing the activities enumerated in this application without her consent or approval in the interim basis pending hearing and determination of this application. She also seeks to restrain the 2<sup>nd</sup> defendant from doing the activities enumerated in this application. Having considered the pleadings proffered by the applicant and the assertions put forward by her advocate, I deem it necessary to hear from the defendants/respondents regarding how the 2<sup>nd</sup> defendant has been able to access the suit lands before any restraining orders can be issued by this court.

5. However, to maintain the status quo regarding the current registered ownership of the properties in question, and in accordance with the provisions of section 63 of the Civil Procedure Act, I deem it necessary to issue orders of inhibition prohibiting any dealings whatsoever in the following properties:

1. Land parcel No. KARINGANI/MUIRU/4324
2. Land parcel No. KARINGANI/MUGIRIRWA/2072
3. Land parcel No. KARINGANI/MUIRU/1653
4. MAKAO HOLDINGS G4 and HOUSE H67 LOCATED AT RUAKA
5. MBUGUNI SETTLEMENT SCHEME PHASES ONE PLOT NO. 135 LOCATED AT

MOMBASA.

6. For the avoidance of doubt, the 1<sup>st</sup> and 2<sup>nd</sup> respondents are restrained from selling and changing ownership of the five properties alluded to in paragraph 5 above until after the hearing and determination of this application.

7. This application will be heard interpartes on **19<sup>th</sup> September, 2017**

8. It is so ordered.

Delivered in open court at Chuka this **2<sup>nd</sup> day of August, 2017** in the presence of:

CA: Ndegwa

Miss Kaaria for the Applicant

**P. M. NJOROGE**

**JUDGE**