



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 91 OF 2017

JOHN MWANGI.....PLAINTIFF

VERSUS

JOAN NABANGALA MUSUNGU.....DEFENDANT

R U L I N G

1. By an application dated **17/5/2015** the plaintiff sought a temporary injunction to restrain the defendant from burying the remains of her deceased mother **Ruth Naliaka Musungu** on the plaintiff's land pending the hearing and determination of the main suit.

2. The application is supported by the affidavit of the plaintiff sworn on the 17th May, 2017. The grounds upon which the application is made are that the plaintiff is the legal owner of an acre of land comprised in land parcel No. **Kaisagat/Chepkoilel Block 3/Bwayi/13** having purchased the same from the defendant's father one **Mark Simiyu Musungu** and therefore the defendant does not have any interest whatsoever in the land

3. An agreement for sale dated 17/3/2014 is exhibited. It shows that the plaintiff and Mark Simiyu Musungu had transacted over the said land whereby the plaintiff was sold the suitland free from any encumbrances and undeveloped. It is attested to by an advocate and it is signed by both parties.

4. The application is opposed by the defendant who filed an affidavit dated 29/5/2017 on 29/5/2017. The defendant has annexed copies of the title deed and certificate of official search showing that the land belongs to Mark Simiyu Musungu. She avers that the plaintiff has never bought the land from her father, and that it was one Margaret Wanjiku who had paid money, but adds that the matter was settled before the County Commissioner's office and her money refunded. A document which is handwritten dated 16/5/2014 has been annexed as evidence of that allegation. However I note that Mark Simiyu Musungu refused to sign this purported agreement and that fact was endorsed on the face of the document. Also, neither the plaintiff nor Margaret Wanjiku signed the said document. There is also no evidence that the money paid by Wanjiku was refunded.

5. A supplementary affidavit sworn by Mark Simiyu Musungu has been filed. It was sworn on 19/6/2017. He avers that he subdivided his land among his wives and he consequently gave the defendant's mother only a half of an acre because she had only one child, other wives were given **1 acre each**. He avers that the one acre that he sold belonged to one of his wives, who had consented to the sale. He also confirms the plaintiff averment that the defendant sold her mother's **half-acre share** to enable her repay a loan. He avers that he wishes to have the remains of the defendant's mother buried at his farm in Kiminini where he lives. He confirms that the plaintiff is the lawful owner of one acre of land out of parcel No. **Kaisagat/Chepkoilel Block 3/Bwayi/13** and that a title is being processed in the plaintiff's name.

6. The rights of a registered proprietor of land are protected by the provisions of **Section 25 of the Land Registration Act**. Clearly, Mark Simiyu Musungu is the registered proprietor of the land comprised in **LR. No. Kaisagat/Chepkoilel Block 3/Bwayi/13**.

7. The defendant is the daughter to the said Mark Simiyu Musungu who has not been enjoined as a defendant herein, but who has brought forward evidence that the defendant has no right or interest in the suit property.

8. The defendant has not demonstrated any such right or even attempted to controvert the evidence in her father's affidavit. In the light of the above I find that the plaintiff has clearly established a *prima facie* case against the defendant and in an order of temporary injunction is merited.

9. I therefore grant prayer **No. (c)** in the plaintiff's application dated **17/5/2017**. The costs of the application shall be borne by the defendant.

It is so ordered.

Dated, signed and delivered at Kitale on this **28th** day of **September, 2017**.

MWANGI NJOROGE

JUDGE

28/09/2017

Before – Mwangi Njoroge Judge

Court Assistant – Picoty

Ms. Mweneke for the Applicant

Ms. Mufutu holding brief for Arunga for Respondent

Ruling read in open court in the presence of counsel for the parties.

MWANGI NJOROGE

JUDGE

28/09/2017