



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 196 OF 2017

ESTHER J. ROTICH (suing as the legal administrator

of the estate of Fredrick KosgeiRotich).....PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF BARINGO.....1ST DEFENDANT

TRUSTEES FULL GOSPEL CHURCHES OF KENYA...2ND DEFENDANT

JOHN KIPYAMAT.....3RD DEFENDANT

MUSA TUNO.....4TH DEFENDANT

RICHARD LASOI.....5TH DEFENDANT

REUBEN KIPSUMBAI RONO.....6TH DEFENDANT

JOSEPH CHEPKONGA.....7TH DEFENDANT

BUNDOTICH KANDIE.....8TH DEFENDANT

JEREMIAH KURGAT.....9TH DEFENDANT

RULING

1. This ruling is in respect of plaintiff’s Notice of Motion dated 10th May 2017. The application is brought under Order 40 Rule 2 of the Civil Procedure Rules. The orders sought in the application are:

i. Spent

ii. Spent

iii. THAT pending the hearing and determination of this suit, the honorable court be pleased to grant a temporary injunction restraining the defendants either by themselves, agents and/or sympathizers from laying a claim to, trespassing, appropriating, subdividing, allocating encroaching or in any other way interfering with the peaceful and quiet use, possession and enjoyment by the plaintiff of the parcel of Land known as Lembus/Kiptuim/182.

iv. Cost of this application be provided for.

2. The application is supported by an affidavit sworn by the plaintiff. The plaintiff deposes that she is the administrator of the estate of Fredrick KosgeiRotich, her deceased husband, and that the parcel of Land known as Lembus/Kiptuim/182 is registered in the name of the deceased and therefore comprises part of the estate. She exhibited copies of the Land Certificate, Certificate of Official Search as at 4th May 2017 and Certificate of Confirmation of Grant. The plaintiff further deposes that the defendants have constructed on the parcel of land without her consent. The plaintiff therefore urges the court to grant the application.

3. The application has not been opposed by the defendants. When the matter came up for inter parte hearing, the court was satisfied that the defendants had been served. Consequently, the hearing proceeded ex parte.

4. I have considered the application. In an application such as the present one, for the application to be allowed the applicant must establish a prima facie case with a probability of success. Even where a prima facie case is established, an injunction ought not to issue if damages can adequately compensate the applicant. Finally, if the court is in doubt as to the answer of the above two tests then the court can determine the matter on a balance of convenience. These principles were enunciated in the case of **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A 358**. From the copies of the Land Certificate, Certificate of Official Search and Certificate of Confirmation of Grant exhibited in this matter, I am satisfied that the plaintiff has demonstrated a sufficient proprietary interest in the suit property.

5. Similarly, from the unchallenged evidence placed on record by the plaintiff, I am persuaded that the defendants have constructed a building on the suit property without the consent of the plaintiff. In the circumstances, the plaintiff has established a prima facie case with a probability of success. I do not think that damages can adequately compensate the plaintiff.

6. In the end, I grant an injunction restraining the defendants either by themselves, agents and/or sympathizers from laying a claim to, trespassing upon, appropriating, subdividing, allocating encroaching or in any other way interfering with the peaceful and quiet use, possession and enjoyment by the plaintiff of the parcel of land known as Lembus/Kiptuim/182.

7. Costs to the plaintiff.

Dated, signed and delivered in open court at Nakuru this 27th day of September 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Ikua for the plaintiff/applicant

No appearance for the defendants/respondents

Court Assistant: Gichaba