



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU**

**E.L.C. CASE NO. 51 OF 2017**

**RAURENJIA NGURU NJIRI.....1<sup>ST</sup> PLAINTIFF**

**JAMES MURITHI NJERU.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**JANE TERRY WANJIRU MBOGO.....DEFENDANT**

**RULING**

1. The Plaintiff in this suit filed a notice of motion dated 8<sup>th</sup> March 2017 seeking two interlocutory injunctions against the Defendant as well as an order for the OCS Kibugu Police Station to ensure compliance with the orders once granted. The material injunction for the purpose of this ruling seeks to restrain the Defendant from harvesting, cultivating, utilizing, damaging, causing acts of waste by cutting trees and from interfering with *Title No. Ngandori/Ngovio/5424* pending the hearing and determination of the suit.
2. The said application was supported by the supporting affidavit of the 1<sup>st</sup> Plaintiff dated 8<sup>th</sup> March 2017 which she swore on her own behalf and on behalf of the 2<sup>nd</sup> Plaintiff. The said application was also supported by the further affidavit of the 1<sup>st</sup> Plaintiff sworn on 2<sup>nd</sup> May 2017.
3. The 1<sup>st</sup> Plaintiff stated that she was the registered proprietor of *Title No. Ngandori/Ngovio/5424* (hereinafter known as the 'suit property') which she was in the process of selling to the 2<sup>nd</sup> Plaintiff. She further stated that the Defendant was a trespasser on the suit property since she had her own parcel of land *Title No. Ngandori/Ngovio/5425* which she was utilizing.
4. The said application was opposed by the Defendant who filed a replying affidavit sworn on 30<sup>th</sup> March 2017. She stated that she was married by the 1<sup>st</sup> son of the 1<sup>st</sup> Plaintiff known as Nyaga in 1993 and they were blessed with 3 children. When Nyaga died in 2002, she got married to the second born son of the 1<sup>st</sup> Plaintiff known as Muchira with whom they had 3 more children. She further stated that parcel no. 3425 was transferred to her by her father in law on account of her marriage to Nyaga.
5. The Plaintiff also stated that the suit property was given to her second husband, Mr Muchira by her father in-law and that they were taken to the relevant Land Control Board for consent. She, however, stated that her second husband died in 2015 before the suit property could be transferred into his name. She stated that the relevant documents to facilitate a transfer were handed to her surveyor who colluded with her mother in-law to defraud her of the suit property.
6. The Defendant further stated that she had utilized the suit property for 17 years. Her case was that her

mother in law secretly and fraudulently caused the suit property to be registered in her name with a view to selling it. She submitted that the two parcels of land ie parcel Nos. 5424 and 5425 were supposed to be inherited by the children of Nyaga and Muchira respectively. She therefore wanted the suit property to be registered in her name as trustee for the children of Muchira. Consequently, she asked the court to dismiss the application.

7. It is clear from the record that the Defendant in this case had on 9<sup>th</sup> March 2017 filed Embu ELC No. 47 of 2017 against the 1<sup>st</sup> Plaintiff and his father in law, Riro Mwendano in which it was pleaded that her mother in-law had fraudulently caused parcel No. 5424 to be registered in her name with the collusion of a private surveyor. The Defendant therefore sought orders for cancellation of the title deed issued to the 1<sup>st</sup> Plaintiff herein and an order for her registration as owner in trust for the children of the late Muchira, among other reliefs. That suit is still pending before this court and an order for its consolidation with the instant suit was made on 19<sup>th</sup> June 2017.

8. The main issue for consideration in this application is whether or not the 1<sup>st</sup> Plaintiff has satisfied the requirements for the grant of an order for interlocutory injunction as set out in the case of *Giella v. Cassman Brown & Co Ltd [1973] EA 358*. On the basis of the material on record, the court is satisfied that the 1<sup>st</sup> Plaintiff as the current registered owner has made out a *prima facie* case with a probability of success even though her title is being challenged on account of alleged fraud. The allegations and particulars of fraud can only be conclusively determined by the trial court at a later stage.

9. The next question for consideration is whether or not the 1<sup>st</sup> Plaintiff is likely to suffer any irreparable loss or damage unless the orders sought are granted. In most land disputes, an applicant may easily establish the danger or risk of irreparable damage or loss. So what kind of irreparable loss or damage has been demonstrated or can be inferred in this suit? The 1<sup>st</sup> Plaintiff has exhibited a sale agreement between her and the 2<sup>nd</sup> Plaintiff for the sale of the suit property for Kshs 1,100,000/-. She is keen to dispose of the suit property at a specified value and price. If she is willing to part with the suit property at that amount, then it is clear to me that the value of the subject matter is quantifiable and any loss or damage she may suffer if the injunction is not granted can be compensated by an award of damages.

10. In those circumstances, therefore, the court is not satisfied that the 1<sup>st</sup> Plaintiff has satisfied the second principle for the grant of an order of interlocutory injunction. The court, therefore, need not consider the third principle on balance of convenience.

11. The upshot of the foregoing is that the 1<sup>st</sup> Plaintiff's notice of motion dated 8<sup>th</sup> March 2017 is hereby disallowed. There shall be no orders as to costs.

12. Due to the peculiar nature of the two pending suits herein and the fact that there is a sale agreement between the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs over the sale of the suit property, the court hereby certifies this suit as fit for hearing on priority basis.

13. The court shall give directions on the hearing of the suit at the time of delivery of the ruling.

14. Orders accordingly.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **26<sup>th</sup>** day of **SEPTEMBER, 2017**

In the presence of Fatuma Wanjiku for the Plaintiffs and the Defendant in person.

Court clerk Njue/Leadys

**Y.M. ANGIMA**

**JUDGE**

**26.09.17**