



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC SUIT NO. 232 OF 2017

**JANE NGONYO NGIGE (SUING AS THE ADMINISTRATRIX OF THE ESTATE OF
BONIFACE NGIGE WAWERU (DECEASED)).....PLAINTIFF**

VERSUS

JOHN NTIMERI.....1ST DEFENDANT

DELAMERE NTIMERI.....2ND DEFENDANT

NDOSHO NTIMERI.....3RD DEFENDANT

MOSES NTIMERI.....4TH DEFENDANT

MELI NTIMERI.....5TH DEFENDANT

SAMUEL NTIMERI.....6TH DEFENDANT

THE LAND REGISTRAR NGONG.....7TH DEFENDANT

THE HON. ATTORNEY GENERAL.....8TH DEFENDANT

RULING

The application before Court is the Plaintiff's Notice of Motion dated 20th February, 2017 brought pursuant to Article 40 of the Constitution of Kenya 2010, Order 40 Rule 1 of the Civil Procedure Rules 2010, Section 1A, 1B, 3A and 63(e) of the Civil Procedure Act and all the other enabling provisions of the law. The application is premised on the grounds which in summary are that the Plaintiff is the widow and Administratrix of the estate of BONIFACE NGIGE WAWERU (Deceased) who was the legal and rightful owner of all that parcel of land known as KAJIADO/OLCHORO - ONYORE/1314 (suit land) having purchased it for valuable consideration. The suit land measuring six (6) hectares was purchased by the deceased from one NTIMERI OLOLOTUNO (deceased) who was the registered owner vide a Sale Agreement dated 16th January, 1984 which he entered into with BONIFACE NGIGE WAWERU (deceased). From the time of purchase of the suit land, the family of the late BONIFACE NGIGE WAWERU has been residing thereon and enjoying quiet possession until the year 2014 or thereabout when the 1st - 6th Defendants began making wild allegations that their father the late NTIMERI OLOLOTUNO had not sold the said suit property to the Plaintiff's husband and hence they were trespassing thereon. Despite the Plaintiff seeking intervention of the relevant administrative offices and the office of the 7th Defendant, there has been no help forthcoming. The 1st - 6th Defendants know very well the suit parcel belongs to the Plaintiff's family who have lived on it for 30 years and persist to unlawfully dispossess them.

The application is supported by the affidavit JANE NGONYO NGIGE the Plaintiff herein where she deposes that she has resided on the suit land and has been in occupancy thereon since 1984. She avers that after her husband's demise in 2006 she obtained Letters of Administration Intestate and made an application at the Ngong Land Registry for transfer of suit land as per the Confirmation of Grant but was informed title deed is fake. She states that despite the husband duly paying consideration for the plot, submitting all the necessary forms needed for transfer plus registration and subsequently being issued with a title deed by the 7th Defendant, the same office questions its authenticity. She further deposes that she sought intervention from the Deputy County Commissioner Kajiado and District Land Registrar Ngong who summoned the 1st - 6th Defendants to settle the dispute but their terms were utterly unacceptable. Further that the 1st - 6th Defendants have demanded that she should only take four (4) acres of approximately 17 acres of the suit land or accept a refund of the purchase price of Kshs 60,000 as paid back in 1984. She states that the 1st - 6th Defendants have exhibited violent tendencies to deny her access to the suit land and seeks the Court's intervention to restrain them from denying her the use and quiet enjoyment of the suit land.

Except for the 7th and 8th Defendant who filed a Defence, the 1st - 6th Defendant never filed a replying affidavit nor Defence to rebut the Plaintiff's claim. All the eight Defendants failed to attend court on 9th May, 2017 when the application was scheduled for hearing. Upon perusal of the affidavit of service sworn by STEPHEN WAITITU KIMANI on the 8th May, 2017, the Court notes that all the Defendants were duly served. The application hence proceeded unopposed.

Issues and Determination

Upon consideration of the materials presented and arguments canvassed by the Plaintiff/Applicant in respect to the Notice of Motion dated 20th February, 2017 the Court has analyzed that the main issue for determination is whether the Plaintiff is entitled to the injunctive orders sought.

In line with the principles for consideration in determining whether temporary injunction can be granted or not as settled in the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358** I wish to interrogate whether the Plaintiff/Applicant has made out a prima facie case with a probability of success at the trial.

In the instant case, the application proceeded unopposed as the Defendants' failed to file a replying affidavit to rebut the evidence adduced by the Plaintiff.

I note the Plaintiff is an administratrix of the estate of the late BONIFACE NGIGE WAWERU as evidenced by the Certificate of Confirmation of Grant dated 16th July, 2014. The Plaintiff has also produced documentation to prove she attempted to transfer the suit land to herself but this was not effected as she was told the title deed in her custody is fake. Despite seeking intervention of the Deputy County Commissioner Kajiado North Sub county and the District Land Registrar Kajiado North District the dispute over the suit land has not been resolved. The Plaintiff claims to have been residing on the suit land since 1984 and the 1st - 6th Defendants have interfered with her peaceful occupation of the same.

Since the application proceeded unopposed and there is no evidence to rebut the claim by the Plaintiff, I find that the Plaintiff has established a prima facie case with a probability of success and will proceed to allow prayers 3 and 4 of the Notice of Motion dated the 20th February, 2017 as follows:

3. Pending the hearing and determination of this suit, an order of temporary injunction be and is hereby issued restraining the Defendants, their agents and/or servants from trespassing, encroaching, interfering or otherwise dealing with the suit parcel of land.

4. The area Chief and Officer Commanding Station Kiserian Police Station do ensure compliance of this order.

The costs will be in the cause

Dated signed and delivered in Open Court at Kajiado this 21st day of September, 2017.

CHRISTINE OCHIENG

JUDGE

REPRESENTATION.

Irungu for plaintiff

M/s Nyamolo for defendant

Agina for 1st to 6th Defendant

Mpoye – Court Assistant