



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 250 OF 2017

MARY CHELANGAT.....PLAINTIFF

VERSUS

DAVID KIPKEMOI LANGAT.....DEFENDANT

RULING

***(An application for injunction to restrain the defendant from interfering with a parcel of land; plaintiff alleges that she is the legal owner of the suit property, that a third party is holding another title deed in respect of the property but which title the plaintiff contends is fraudulent; application not opposed; court holds that no prima facie case established; application dismissed)***

1. The plaintiff filed this suit on 14<sup>th</sup> June 2017. In the plaint she seeks a declaration that she is the owner of parcel of land known as MITI MIREFU SETTLEMENT SCHEME/21 (UPPER) among other prayers. Simultaneously with the plaint the plaintiff also filed Notice of Motion dated 5<sup>th</sup> June 2017, brought under Order 40 rules 1, 2, and 3 of the Civil Procedure Rules, 2011 [sic]. The prayers sought in the application are:

1. Spent

2. Spent

3. *THAT pending the hearing and determination of this suit this Honourable Court do issue an order of temporary injunction restraining the defendant by himself, his agents and/or servants from interfering with parcel MITI MIREFU SETTLEMENT SCHEME/21 (UPPER) OCS Mau-Summit to ensure compliance of this order*

4. *THAT costs of this application be provided for.*

2. The application is supported by the affidavit of the plaintiff. The plaintiff deposes that she is the registered proprietor of the parcel of land known as MITI MIREFU SETTLEMENT SCHEME/21 (UPPER) and annexes a copy of the title deed as well as a copy of a Certificate of Official Search as at 5<sup>th</sup> October 2016 in support of the contention. She accuses the defendant of trespassing on the suit property, cultivation it and denying her access to it. She further deposes that she sold the plot to Alice Chepngetich and Rose Chebet Limo but the defendant has incited them that the land is not the plaintiff's. She also annexes some letters, one of which is a letter dated 16<sup>th</sup> December 2014 written to the DCIO Molo by S.L.M.H. Muhia her then advocate which gives a background of the issues involving the suit property. One of the statements made in the letter is that there is a person named Langat who is also holding a title deed in respect of the suit property but which title deed the plaintiff maintains is a forgery or was obtained

fraudulently.

3. When the application came up for inter parte hearing, there was neither appearance for the defendant nor any response to the application. Being satisfied that service had been effected, I allowed hearing the application to proceed. Counsel for the plaintiff relied on the affidavit in support of the application and urged the court to allow the application.

4. I have considered the application. From the material placed before the court by the plaintiff, the plaintiff herself deposes that she sold the suit property to Alice Chepngetich and Rose Chebet Limo. She has further placed before the court the letter dated 16<sup>th</sup> December 2014 written to the DCIO Molo by S.L.M.H. Muhia, her advocate. It is stated in the letter that there is a person named Langat who is also holding a title deed in respect of the suit property. It appears that the suit property is being claimed by the plaintiff, the two purchasers Alice Chepngetich and Rose Chebet Limo and one Langat. There have been police investigations as to whether or not there was forgery as regards the titles. The court has not been told the outcome of the investigations. In such circumstances, I am not persuaded that the plaintiff has a prima facie case with a probability of success. That being the case, I do not need to enquire into whether the other limbs of the test in **Giella v Cassman Brown & Co Ltd [1973] EA 358** have been satisfied.

5. In the end, I am not persuaded that the injunction sought should be granted. Notice of Motion dated 5<sup>th</sup> June 2017 is dismissed. Since the application was not opposed, I make no order as to costs.

6. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 21<sup>st</sup> day of September 2017.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

No appearance for the plaintiff/applicant

No appearance for the defendant/respondent

Court Assistant: Gichaba