



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 273 OF 2017

ESTHER MUTHONI.....PLAINTIFF

VERSUS

KINYUA FREDRICK MUTEGI.....1ST DEFENDANT

NANCY GATUNE KARERI.....2ND DEFENDANT

RULING

1. This application is dated 2nd August, 2017 and seeks orders:

1. That the application be certified as urgent and service of the application be dispensed with in the first instance.

2. That an order of temporary injunction do issue restraining the 1st defendants (sic) by himself or anybody acting on his behest or instructions from alienating, disposing, transferring, granting user, access or occupation to 3rd parties or in any way or manner whatsoever interfering with the full access, peaceful user and occupation of the jointly owned properties with the plaintiff, known as land parcels No. KARINGANI/MUIRU/4324, KARINGANI/MUGIRIRWA/2072, KARINGANI/MUIRU/1653, MAKAO HOLDINGS HOUSE G4 AND HOUSE H67 LOCATED AT RUAKA; MBUGUNI SETTLEMENT SCHEME PHASES ONE PLOT NO. 135 LOCATED AT MOMBASA without the consent or approval of the plaintiff in the interim basis pending interparty hearing and determination of the instance application.

3. That an order of temporary injunction do issue restraining the 2nd defendants (sic) acting by himself or anybody acting on her behest or instructions from trespassing, encroaching or in any way, form/manner whatsoever interfering with the full access, peaceful user and occupation of the plaintiff (sic) jointly owned properties known as land parcels No. KARINGANI/MUIRU/4324, KARINGANI/MUGIRIRWA/2072, KARINGANI/MUIRU/1653, MAKAO HOLDINGS HOUSE G4 AND HOUSE H67 LOCATED AT RUAKA; MBUGUNI SETTLEMENT SCHEME PHASES ONE PLOT NO.135 LOCATED AT MOMBASA, in the interim basis pending the hearing and determination of the instance application.

4. That Order 2 and order 3 above do issue as prayed for in the interim basis pending the hearing and determination of the main suit.

5. That the costs of the application be in cause.

2. The application is supported by the Affidavit of ESTHER MUTHONI, the applicant and has the

following grounds:

1. That the plaintiff and the 1st defendant are husband and wife having been legally married on the 8th August, 1998.

2. THAT the plaintiff is a co-owner/proprietor of the following properties, Land parcels No. KARINGANI/MUIRU/4324, KARINGANI/MUGIRIRWA/2072, KARINGANI/MUIRU/1653, MAKAO HOLDINGS HOUSE G4 AND HOUSE H67 LOCATED AT RUAKA; MBUGUNI SETTLEMENT SCHEME PHASES ONE PLOT NO.135 LOCATED AT MOMBASA with the 1st defendant having acquired them jointly during the subsistence of their marriage.

3. That the 1st defendant has locked the plaintiff out of all their jointly owned properties by denying her entry, access, peaceful user and or occupation for no justifiable reasons.

4. That the 2nd defendant who is stranger (sic) has trespassed encroached and or interred (sic) and continues to interfere with the free access, user and occupation of the plaintiff peaceful of her properties a fact that is detrimental to the plaintiff's proprietary rights to those properties.

5. That the 1st defendant has, alienated one of the suit lands, land parcels No. KARINGANI/MUIRU/4324 and allowed the 2nd defendant to trespass and encroach on the same without the consent or approval of the plaintiff who has proprietary interest over the same.

6. That if the orders of temporarily injunction sought herein are not granted to preserve the suit properties, the 1st defendant may alienate, dispose or transfer the same and the plaintiff's proprietary rights will be (sic) continue to be trampled upon and she will suffer irreparable loss and material damage as a result of the 2nd defendant (sic) continued trespass on her properties.

7. That the orders herein are sought for the interest of justice.

3. On 2nd August, 2017, this court restrained the 1st and 2nd Respondents from selling and changing ownership of the properties alluded to in the application.

4. The court ordered the application be heard interpartes on 19.9.2017.

5. On 19.9.2017, the parties did not come to court. Indeed there is no evidence that today's hearing date had been served upon the respondents.

6. In the circumstances, this application is dismissed. Consequently the interim orders issued on 2.8.2017 are vacated.

7. I issue no order as to costs.

8. It is so ordered.

Delivered in open court at Chuka this **19th day of September, 2017** in the presence of:

CA: Ndegwa

Parties absent

P.M. NJOROGE

JUDGE