



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO. 361 OF 2016**

**MARY WAMBUI NJOROGE**

**(suing as a legal representative of the estate of the late**

**SIMON MURAYA WACIRA).....1<sup>ST</sup> PLAINTIFF**

**ANN NJOKI MURAYA**

**(suing as a legal representative of the estate of the late**

**SIMON MURAYA WACIRA).....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**TERESIAH NJOKI KIMIRI).....DEFENDANT**

**RULING**

***(Application for injunction; principles to be applied; plaintiff being wife of former deceased proprietor of certain land; the land parcels transferred to the defendant, a second wife, after death of their husband; plaintiff claiming that this was done by fraud without any succession cause having been undertaken; no response to the application; transfers done after death of the proprietor; no proof that the defendant filed any succession cause; prima facie case established; application for injunction allowed)***

1. The application before me is that dated 5 September 2016 which was filed by the plaintiff together with the plaint. It is basically an application for injunction vide which the plaintiff wishes to have the defendant restrained from entering or dealing with the subject matter of this case, which are the land parcels Kiambogo/Kiambogo Block 2/16017 (Mwariki), Kiambogo/Kiambogo Block 2/22071 (Mwariki), Miti Mingi/Mbaruk Block 5/1015 (Kiungururia), until this case is heard and determined.

2. The plaintiffs are the legal representatives of the estate of one Simon Muraya Wacira who died on 23 January 2016. The 1st plaintiff is the first wife of the deceased and the 2nd plaintiff his daughter, whereas the defendant is the deceased's second wife. It is claimed that after the demise of the deceased, the defendant transferred the suit properties to herself on 15 February 2016 and 3 March 2016 in disregard to the provisions of the Law of Succession Act, Cap 160, Laws of Kenya, specifically without first filing a succession cause. In the suit, the plaintiffs want a declaration that the transfer of the properties to the defendant are as a result of forgery and therefore null and void. They also want the titles to revert to the

name of the deceased and the defendant's title to be cancelled, and a permanent injunction to restrain the defendant from any dealings with the suit properties.

3. The respondent was served with the pleadings and the application but she had not filed anything by the time the application came up for inter partes hearing on 10 October 2017. Ms. Kerubo, learned counsel for the respondent, sought an adjournment which I declined and I directed the matter to proceed. The only material that I have is therefore that displayed by the applicants.

4. I have considered the application. What is before me is an application for injunction and the principles upon which such applications are considered were laid down in the case of ***Giella vs Cassman Brown (1973) EA 358***. One needs to demonstrate a prima facie case with a probability of success; show that he stands to suffer irreparable loss if the injunction is not granted; and where the court is in doubt, it will decide the case on a balance of convenience.

5. In their supporting affidavit, the applicants have annexed copies of the Green Cards to the suit properties. I have seen from the Green Cards of the land parcels Kiambogo/Kiambogo Block 2/16017 and 22071 (Mwariki) that the deceased was registered as proprietor of these properties until 15 February 2016 when the defendant became registered as proprietor. The parcel number Miti Mingi/Mbaruk Block 5/1015 (Kiungururia) was again under the ownership of the deceased, until 7 March 2016 when one I S W (minor) became registered as proprietor. It is not very clear who this minor is, as he is not a defendant and neither is he described in this suit. Be as it may, the estate of the deceased has not yet been distributed and I am of the view that the applicants have demonstrated prima facie that the transfer of the properties to the new owners was done irregularly. The defendant will of course have her day in court to defend her registration, but I am of the view that the applicants have supplied sufficient material to warrant a preservation of the said properties. If an injunction is not issued, there may be dealings entered with respect to the said properties which will cause the plaintiffs irreparable loss.

6. Given the above, I issue an order of injunction, barring the defendant from entering into any sale, charge, lease or any other dealings in respect of the suit properties. To fortify this order of injunction, I also issue an order of inhibition, restricting the registration of any dealings in the register of the land parcels Kiambogo/Kiambogo Block 2/16017 and 22071 (Mwariki) and the land parcel Miti Mingi/Mbaruk Block 5/1015 (Kiungururia) until this suit is heard and determined or until further orders of this court. I further direct that the said I S W (minor) be enjoined to this suit through an appropriate guardian ad litem. In so far as possession of the suit properties is concerned, the status quo prevailing before the passing on of the deceased, be maintained until this suit is finalized.

7. The applicants will have the costs of this application.

8. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 31<sup>st</sup> day of October 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of : -**