



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

**AT NYERI**

**ELC CASE NO. 237 OF 2016**

**JOHN GATHUA THUKU.....PLAINTIFF**

**-VERSUS-**

**JAMES NDIRITU KARIAMBURI.....1<sup>ST</sup> DEFENDANT**

**MARY WAMBUI KIBE.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Notice of Motion before me is dated 2<sup>nd</sup> November, 2016 and is brought under **Section 3** and **3A** of the Civil Procedure Act, **Order 40 Rule 1** and **Order 51 Rule 1** of the Civil Procedure Rules, 2010 seeking the following orders:

**1) Spent**

**2) Spent**

**3) A temporary injunction be issued restraining the defendants/respondents by themselves, servants, agents and/or anyone claiming under them from alienating, entering, and/or in any other manner interfering with the plaintiff's possession and user of the suit property being the 43.9 acres the plaintiff occupies within Land Reference No. 25103/2 Kamatongu area within Nyeri pending the hearing and determination of this suit.**

**4) The officer commanding Mweiga Police Station to ensure compliance with the orders.**

**5) Costs of this application be provided for in the cause.**

3. The application is premised on the grounds on its face and is supported by the affidavit of **John Gathua Thuku** sworn on **2<sup>nd</sup> November, 2016** in which he depones that on 18<sup>th</sup> October 2013, he purchased 43.9 acres from the 1<sup>st</sup> defendant (a beneficiary to the estate of Alexander Kiriamburi Kagumba) excised from LR No. 25103/02 through the 2<sup>nd</sup> defendant who was his duly appointed Attorney; that he paid the entire purchase price being Kshs.13,960,000/-, took possession and made massive developments awaiting issuance of ownership documents in his name.

4. It is the applicant's contention that in total disregard of the sale agreement between them, the 1<sup>st</sup> respondent in 2016 entered into an agreement for lease of the suit property to a 3<sup>rd</sup> party (JGT7).

5. The applicant prays for an order of injunction because he is in danger of being dispossessed of the suit property by the defendants and the third party.

6. In support of his case, the applicant annexed the following documents;

- (i) General Power of Attorney by the 1<sup>st</sup> defendant donated to Wambui Kibe dated 8<sup>th</sup> April, 2013.
- (ii) An agreement for sale between Mary Wambui Kibe as Attorney of James Ndiritu Kariamburi and John Gathua Thuku for purchase of 43.9 acres out of LR No. 25103/2 Kamatongu farm, at Kshs.13,960,000/-.
- (iii) A deed plan.
- (iv) Sketch map for the suit property.
- (v) Certificate of confirmation of grant.
- (vi) A letter from the firm of Alphonse Mutinda and Company Advocates dated 28<sup>th</sup> September, 2016 together with a transfer document.
- (vii) A lease agreement between James Ndiritu Kariamburi and Peter Kingori Gikonyo.

7. The application is opposed by the 1<sup>st</sup> defendant through his replying affidavit sworn on **23<sup>rd</sup> January, 2017**. He denies giving a Power of Attorney to the 2<sup>nd</sup> defendant in respect of the 43.9 acres out of LR No. 25103/2 and also denies entering into a sale agreement with the applicant. He contends that such a sale is null and void as consent from the Land Control Board was never obtained. Further, been one of the administrators to the estate of Alexander Kariamburi Kagumba (deceased), he lacked capacity to enter into such an arrangement on his own since the suit property is still registered in his father's name and cannot be partitioned as the beneficiaries named in the grant are entitled to equal undivided shares. He describes the applicant as a trespasser and an intermeddler in the estate of the deceased who should be evicted.

8. Although served, the 2<sup>nd</sup> defendant did not respond to the application and is yet to file her defence.

9. This being an application for injunction, I am guided by the principles enumerated in the case of **Giella vs Cassman Brown** (1973) E.A 358 that;

**“First, an applicant must show a prima facie case with a probability of success.**

**Secondly, an inter-locutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages.**

**Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”**  
Also see *EA Industries vs Trufoods* [1972] EA 420.

10. From the pleadings and the documents annexed by the applicant, it is not in contention that the suit property is registered in the name of Alexander Kiriamburi Kagumba (deceased); that the 1<sup>st</sup> respondent is one of the administrators of his estate and that there were some dealings between the 2<sup>nd</sup> respondent and the applicant towards purchase of 43.9 acres out of LR NO. 25103/2 Mweiga. It is also common ground that the applicant is in possession of the suit property and is currently in occupation. This is admitted by the 1<sup>st</sup> respondent when he refers to the applicant in paragraph 7 of his replying affidavit “as a trespasser and an intermeddler in the estate of a deceased and should be evicted.” The impact of not granting the orders sought when it is clear the applicant is in occupation or at the very least maintain *status quo*, will result in the applicant being evicted from the suit property.

11. Since it is never the intention of any court to evict parties at an interlocutory stage, as stated in **Esso (K) Ltd V. Mark Makwata Okiya** Civil Appeal No. 69 of 1991, where the court of Appeal held that;

“.....**the purpose of Injunction is to maintain status quo**”, I invoke the inherent powers of this court under **Sections 1A, 1B and 3A** of the Civil Procedure Act 2010 and order that *status quo* be maintained pending the hearing and determination of this suit.

12. Costs will be in the cause.

**Dated, signed and delivered in open court at Nyeri this 30<sup>th</sup> day of October, 2017.**

**L N Waithaka**

**JUDGE**

Coram:

Mr. Thuku for the plaintiff/applicant

N/A for the 1<sup>st</sup> respondent

N/A for the 2<sup>nd</sup> respondent

Court assistant - Esther