



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 495 OF 2013

MARY WAMBUI WAWERU.....PLAINTIFF

VERSUS

SERAH WANJA WACHIRA (Sued as the personal representative of the estate of

LYSTER WACHIRA MWANGI (DECEASED).....1ST DEFENDANT

RULING

(Application for injunction; respondent having title and being in possession; in circumstances best not to interfere with occupation; however, order issued for title to be preserved pending hearing and determination of the case)

1. This suit was commenced by way of plaint filed on 8th August 2013. The plaintiff is step-mother to Lyster Wachira Mwangi (deceased) and she has sued the defendant who is the administrator of the estate of the deceased. Her case is that she is the proper owner of the land parcel Nyandarua/Oraimutia/1481 (the suit property). This property is registered in the name of the deceased but it is the contention of the plaintiff that the deceased obtained registration by way of fraud.
2. Inter alia, it is alleged that the deceased forged documents to acquire registration and that the plaintiff had no knowledge of the same and did not give consent to the transfer. In the suit, the plaintiff wants the suit property registered in her name.
3. Through an application dated 9 June 2015, filed under Order 40 Rule 1 of the Civil Procedure Rules, 2010, the plaintiff wants the defendant restrained from damaging, wasting or in any other way possible adversely dealing with the suit property. It is her contention that the defendant is cutting down trees and destroying the fence. She has deposed in her supporting affidavit that she had invited the deceased and his family to reside with her on the suit property but she vacated the same in the year 2012 owing to constant harassment by the defendant and she felt that her life was in danger. It will therefore be discerned that it is the defendant who is in possession of the suit property.
4. Despite being served, the defendant has not responded to the application and at the hearing of the same, Mr. Karanja Mbugua, counsel for the defendant, submitted that he has no instructions on the application.
5. I have considered the application. As earlier observed, it is the defendant who is in possession of the property. It has also taken a couple of years from the filing of this suit to the filing of this application and given those circumstances, I think it may not be best to interfere with the present occupation and use of

the property. It is however necessary to preserve the title of the suit property.

6. I therefore order the defendant not to sell, charge, lease or in any other way encumber or deal with the suit property pending the hearing and determination of this suit. I further direct the land register not to permit the registration of any dealings in the register of the suit property, pending hearing and determination of this suit.

7. Costs of the application shall be in the cause.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 20th January, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of:-

Ms. Njeri Njagua for plaintiff/applicant

Mr. Karanja Mbugua for defendant/respondent

CA: Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU