



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 283 OF 2015

ALICE WAIRIMU WAWERU.....PLAINTIFF

VERSUS

NAOMI WAMBUI KURIA

THE DIRECTOR OF ADJUDICATION.....1<sup>ST</sup> DEFENDANT

MINISTRY OF LANDS NAIROBI.....2<sup>ND</sup> DEFENDANT

RULING

***(Application for injunction; principles to be applied; plaintiff's late husband having purchased the suit property; succession filed and property distributed to the plaintiff; 1st defendant laying claim to the land stating that she also purchased the land from the original owner; no response filed to the application and no proof that 1st defendant also purchased the said land; prima facie case established; application allowed)***

1. This suit was commenced by way of plaint filed on 13th October 2015. Together with the plaint, the plaintiff filed an application for injunction under certificate of urgency. I certified the application as urgent and directed it to be served and be heard *inter partes* on 2<sup>nd</sup> November 2015. The application was duly served but the defendants did not file any response to it. Mrs. Nancy Njoroge for the plaintiff has urged me to allow the application in light of the fact that the defendants have not filed any papers to oppose it.

2. I have considered the application which is for injunction. The principles upon which a court will assess an application for injunction were laid down in the case of ***Giella vs Cassman Brown (1973) EA 358***. In the said case, it was stated that to succeed in an application for injunction, one needs to demonstrate a prima facie case and also show that he stands to suffer irreparable loss if the injunction is not allowed. If in doubt the court will decide the application on a balance of convenience.

3. In this matter, the plaintiff's case is that her late husband, Francis Ikenye Muiruri, on 3rd May 1985, purchased from one Kamau Mweha, the land parcel Nyandarua/Mawingo/665. Consent from the Land Control Board was obtained and the transfer forms executed. However, Mr. Muiruri died in the year 1987 before the transfer could be effected. A succession cause to his estate was filed and it was directed that the suit property be registered in the names of the plaintiff and one Henry Mwangi Ikenye (whom I presume to be her son), on their own behalf and in trust for 4 other children who were said to be minors.

4. Her quarrel is that in July 2015, the 1st defendant laid claim to the suit land, alleging that she had also purchased it from Kamau Mweha in the year 1998. It is the plaintiff's position that the 1st defendant has no right over this land. In this suit, the plaintiff wants the 1st defendant to be permanently injunctioned, and for an order directing the 2nd defendant, the Director of Land Adjudication, to transfer the suit property to her.

5. As I mentioned earlier, the defendants have not filed any response to this application. I have considered the said application. I have seen a copy of the agreement between the plaintiff's deceased husband and Kamau Mweha. I have also seen a copy of the Letter of Consent from the Land Control Board sanctioning the sale. The certificate of Confirmation of Grant distributing the estate of the plaintiff's late husband to the plaintiff was annexed. The defendants have not tabled anything to show that the 1st plaintiff has any right over the suit land. That being the case, I am convinced that the plaintiff has established a prima facie case with a probability of success. She will no doubt suffer irreparably if the defendants were to interfere with her possession of the suit land.

6. In the premises, I do allow this application for injunction and do restrain the 1st defendant either by herself or her servants/agents and/or assigns from interfering with the plaintiff's quiet possession of the land parcel Nyandarua/Mawingo/665, until the final disposal of this suit.

7. The plaintiff will also have the costs of the application.

8. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 2<sup>nd</sup> February, 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Ms. Nancy Njoroge for plaintiff/applicant

Defendant: absent

CA: Janet

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT AT NAKURU**