



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 50 OF 2016

LENNA MMBONE.....PLAINTIFF

VERSUS

FRANCIS WANYONYI MUSOMBI}

PETERKINS CHESOLI}.....DEFENDANT

R U L I N G

1. The Applicant **LENNA MMBONE** filed a Notice of Motion dated 31/3/2016 in which she seeks an injunction to restrain the Respondents from interfering in any manner with **1.2 acres** comprised in **LR No Trans-Nzoia/Baraton/58** (suitland). The Applicant contends that she cohabited with the first Respondent between 2007 and 2015 after the demise of her husband.
2. In 2007, she entrusted the first Respondent with some money to purchase land for her. The first Defendant proceeded to purchase 1.2 acres from the second Respondent but instead of indicating in the agreement that she was the one purchasing the land, he indicated that he was the one buying the land and that the Applicant was only a witness to the agreement for purchase.
3. The Applicant contends that she is illiterate and that she only discovered in 2015 that the first Respondent had indicated that he was the purchaser. That she discovered this after her relationship with the first Respondent became sour and she took a copy of the agreement to her children who told her that the agreement showed that it is the first Respondents who was the purchaser of the suitland.
4. The Applicant's application has been opposed by the two Respondents who filed separate replying affidavits. The first Respondent contends that it is him who bought the suit land from proceeds of his Masonary work and farming. That the Applicant is not illiterate as she claims and that she infact speaks and writes good Swahili. That the agreement was written in Swahili and was read to all parties before it was executed.
5. The first Respondent further contends that he only allowed the Applicant to reside on the suitland for sexual companionship and that she only signed the agreement as a witness. The second Respondent on his part states that it is the first Respondent who bought the suitland from him and that he is related to the Applicant who was only a witness to the agreement.
6. I have carefully gone through the Applicant's application as well as the objection to the same by the Respondents. This being an application for a temporary injunction, the Applicant is expected to first demonstrate that she has a prima facie case with probability of success. Secondly an injunction will not normally be granted unless otherwise the Applicant might suffer injury which

will not adequately be compensated in damages. Thirdly if the court is in doubt, it will decide the application on a balance of convenience. See *Giella -vs- Cassman Brown Co [1973] EA 358.*

7. In the instant case, it is clear from the sale agreement dated 3/1/2007 that the purchaser of the suitland was the first Respondent. The Applicant signed the agreement as a witness. All the payments were made by the first Respondent and witnessed by the Applicant as per the acknowledgements. The last payment was made on 22/10/2007. There is no indication in the agreement or acknowledgements that the suitland was being bought on behalf of the Applicant. The agreement was prepared in Swahili.
8. It is doubtful that the Applicant could give money for purchase of land in her name and remain ignorant that the sale agreement was not in her name for nine (9) years. Though the Applicant has not indicated her age, I doubt that there is a person who as late as 2007 does not know Swahili but can append her signature in a document which signature is consistent. I find that the Applicant has not demonstrated that she has a prima facie case with probability of success.
9. Prima facie, the land was bought in the name of the first Respondent. The second Respondent who sold the land has said that it is the first respondent who bought land from him. He says he knows the Applicant with whom they are related. I do not see any loss which she will suffer which will not be compensated in damages.
10. Even on consideration of the balance of convenience, the balance of convenience tilts in favour of the first Respondent who is shown as purchaser. It will be unfair to deny someone access to his land just because someone else claims that the land is supposed to be hers. All in all, I find that the Applicant's application lacks merit. The same is hereby dismissed with costs to the Respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this 2nd day of June 2016.

E. OBAGA

JUDGE

In the presence of M/s Arunga for Applicant and M/s Khaoya for Respondent.

Court Assistant – Isabellah

E. OBAGA

JUDGE

2/6/16