



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 67 OF 2016

ROSEMARY NYAMBURAPLAINTIFF

VERSUS

BEATRICE ADHIAMBO ODERO.....1ST DEFENDANT

JACKTON OBUYAYA2ND DEFENDANT

RULING

(Application for injunction; plaintiff having purchased half share of a plot from 1st defendant; 1st defendant now intending to transfer whole share to 2nd defendant; prima facie case established; application for injunction allowed)

1. This suit was commenced by way of plaint that was filed on 4 March 2016. It is her case that on 7 May 2015, she did enter into an agreement with the 1st defendant for the purchase of the Plot identified as Plot No. 210 (Kerma) which the plaintiff now states is registered as the land parcel Nakuru/Njoro/5. She avers that she paid the sum of Kshs. 140,000/= and that it was agreed that the said plot would be jointly registered in the names of herself and the 1st defendant and title deed issued in their names. It is her case that the 1st defendant has now transferred the subject parcel of land to the 2nd defendant without her knowledge and it is her view that this is fraudulent. In her case, she wants orders of permanent injunction to restrain the defendants from the Plot No. 210 (Kerma), said to now be the land Nakuru/Njoro/5, and an order for specific performance on the agreement of 7 May 2015.

2. Together with the plaint, the plaintiff filed an application seeking orders to have the defendants restrained by way of injunction from interfering with the suit property. Despite being served the defendants have not responded to the application and have indeed not entered any appearance in this suit.

3. I have considered the application. I have also looked at the agreement of 7 May 2015 referred to me by the applicant. I can see that in that document, which is homemade, it is indicated that the defendant has received the sum of Kshs. 140,000/= from the plaintiff and that the Plot No. 210 at Kerma (Rongai Workshop) will be shared between the plaintiff and 1st defendant and title deed will be in both names. I have also seen a further document dated 25 February 2016 addressed to Rongai Housing Cooperative Society, which provides that the 1st defendant has sold her share to the 2nd defendant as she was unable to raise some money to clear the balance due. In another letter dated 27 January 2016, the 1st defendant has written to Rongai Housing Cooperative Society, stating that her Plot No. 210 (Kerma) be transferred to the 2nd defendant.

4. I note that in the letter of 27 January 2016, the 1st defendant has not declared the interest of the plaintiff. There is therefore danger that the plaintiff may lose her share unless the injunction is issued. It was said that the Plot No. 210 (Kerma) is now Nakuru/Njoro/5 but I have absolutely no evidence of this. I can only issue an injunction in respect of what is described as Plot No. 210 (Kerma) for that is what is disclosed in the documents before me.

5. I therefore make the following orders :-

(i) The defendants are hereby restrained from transferring the Plot No. 210 (Kerma) into the name of the 2nd defendant or to any other person until the hearing and determination of this suit.

(ii) The costs of this application will be to the plaintiff.

6. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 12th day of July, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :

Mr. Maina for plaintiff/applicant

Defendant : Absent

Court Assistant : Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU