



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
ENVIRONMENTAL AND LAND DIVISION
CIVIL SUIT NO 135 OF 2016

1. WILLIAM NDERITU WAWERU

2. SAMUEL NGATIA NDERITU (Suing as the legal Representatives and

Administrators of the Estate of the late

WANJIRU NDERITU (Deceased).....PLAINTIFFS

VERSUS

1. BEATRICE KANANU

2. JOHN KINOTI

3. JOHN KIBUCHI

4. JOHN MWATHE

5. ESTHER NKATHA.....DEFENDANTS

R U L I N G

1. This application is dated 16th August, 2016 and seeks orders:-

1. THAT this application be certified urgent and be heard on priority basis and ex parte in the first instance.

2. THAT prayers numbers 1, 3 and 4 hereof be granted ex parte in the first instance.

3. THAT the Honourable Court be pleased to issue an order of an interlocutory prohibitory injunction restraining the Defendants whether by themselves, their family members, agents, servants, representatives, employees, and/or anybody else acting or claiming on their behalf from entering into, trespassing onto, depositing building materials, constructing, cultivating, leasing or selling or in any way interfering with the Plaintiffs peaceful use and enjoyment of L.R. NO. TIMAU TOWNSHIP/2890/360 in any manner whatsoever pending the hearing and determination of this application inter partes and the main suit.

4. THAT a copy of the Court Order issued in terms of prayer (3) above under the seal of this Honourable Court be served upon the Officer Commanding Police Station (O.C.S) Timau Police

Station to enforce its compliance.

5. THAT the Honourable Court be pleased to issue further orders as are necessary and just to meet the ends of justice in this case.

6. THAT the costs of this application be borne by the Defendants/RESPONDENT.

2. The Application is buttressed by the Affidavit of William Nderitu Waweru and has the following grounds:-

1. THAT the Plaintiff s deceased mother, WANJIRU NDERITU is the registered owner and proprietor of the parcel of Land L.R. NO. TIMAU TOWNSHIP/2890/360 measuring around 0.1000 Ha or thereabout and the payment of the ground rent is up to date. (Hereinafter “the suit property”).

2. THAT the Plaintiff s are the legal representatives and administrators of the estate of their deceased mother, WANJIRU NDERITU.

3. THAT the Defendants have intentionally and illegally and without any colour of right or the Plaintiff s permission whatsoever forcefully occupied, commenced cultivation, deposited building materials and commenced construction and are also interfering with the Plaintiffs peaceful use and enjoyment of the suit property.

4. THAT Defendants forceful occupation, cultivation, depositing of the building materials and construction can be verified by the Honourable Court visiting the suit property.

5. THAT despite the Plaintiffs numerous attempts, pleas and intervention by the area administration officers requiring the Defendants to cease their illegal acts they have defied and continue to remain on the suit property and commit acts of waste thereon.

6. THAT the Plaintiffs attach profound sentimental and economic value into the suit property.

7. THAT the Plaintiffs have a good prima facie case with a high probability of success.

8. THAT the Plaintiffs have reasonable fear that they shall be greatly prejudiced and imminently shall suffer irreparable loss and damage that is incapable of recompense in damages and this suit will be rendered nugatory if this application is not allowed.

9. THAT its only fair and just that this application be allowed until this matter is heard and determined

3. On 31/08/2016, the parties proffered a Consent, duly signed, between the Plaintiffs and the 1st, 2nd, 3rd and 5th Defendants . They asked the Court to adopt it as its order.

4. The Consent is in the following terms:-

“By Consent of the Advocates for the 1st, 2nd and 5th Defendants IT IS HEREBY ORDERED AS FOLLOWS:-

1. That the status quo prevailing on the suit property LR. NO. TIMAU TOWNSHIP/2890/360 be maintained, that is, no party should continue with any further construction, deposit building material, occupy cultivate or lease the suit property pending the hearing and determination of the plaintiffs Application dated 16/8/16.

2. THAT the 1st , 2nd, 3rd and 5th Defendants be granted 14 days to file and serve their Replying Affidavit and liberal leave be granted to the plaintiff to file and serve supplementary

Affidavit within 14 days thereafter.

3. THAT mention for further direction on a date to be given by the Court.

5. The Consent has been read to the parties and the concerned Defendants have undertaken to obey the orders contained therein.

6. The contents of the Consent are adopted as orders of this Court.

7. It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 31ST DAY OF AUGUST , 2016 IN THE PRESENCE OF:-

CC: Lilian /Daniel

Muthomi for the Plaintiffs

John Mwathe -4th Defendant

Miss Wanjohi for 1st, 2nd , 3rd and 5th Defendants

P. M. NJOROGE

JUDGE