



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 4 OF 2016

MONICA WAMAITHA JOHN.....PLAINTIFF/APPLICANT

VERSUS

JANET NANJALA.....DEFENDANT/RESPONDENT

RULING

BACKGROUND

1. The applicant is the registered owner of **LR. No. Kitale Municipality Block 2/740** (suitland). The respondent is a daughter in-law of the applicant. The respondent was married to the son of the applicant who died on **9/1/2015**.
2. Prior to the demise of the applicant's son, the applicant had given her son a plot measuring **50 x 100 ft** on the suitland. The applicant had also given her four other sons plots on the suitland.

APPLICANT'S CONTENTION

3. The applicant contends that she had invited the respondent's husband to come and put temporary structures on the suit property. That it was mutually agreed that the respondent and her husband were to contribute towards payment of land rent and rates in respect of the suit property which they refused to do.
4. It was further agreed that the respondent and her husband were not to erect permanent structures on the portion given to them. Contrary to this mutual agreement, the respondent and her husband went ahead to put up permanent buildings where the respondent is benefitting from rent but that she does not pay rent for the rooms she is occupying and does not contribute to payment of land rent and rates. It is on this basis that the applicant is seeking injunction orders.

RESPONDENT'S SUBMISSIONS

5. The respondent has opposed the applicant's application based on a replying affidavit sworn on 12/10/2016 and filed in court on 13/10/2016. The respondent contends that the orders sought are of a final nature and cannot be granted at interlocutory stage. That there is no construction which is going on at the suit property as alleged. That the respondent has put up permanent buildings on the suit property where she resides and is collecting rent from part of the property for her upkeep.
6. The respondent was married to the applicant's son in **1998**. Dowry was paid in 2007. The applicant was a witness to the dowry payment. The marriage was blessed with three issues but one has since passed on. The applicant started to frustrate her upon the demise of her husband.

ANALYSIS

7. I have gone through the applicant's application as well as the response by the respondent. There is no contention that the applicant is the mother in-law of the respondent. There is also no contention that the respondent is residing on the suit property. The only issue for determination is whether an injunction can be given in the circumstances.

8. The purpose of an injunction is to preserve the subject matter from waste. It is never intended to result in eviction of the respondent before the case is heard. In the instant case, the applicant had given her son who is the respondent's husband a plot measuring 50 x 100 ft. The respondent and her husband had put up a permanent house where they resided until 2015 when respondent's husband died.

9. The applicant now wants the respondent removed from the portion she is occupying. The reason for this is that she does not contribute to payment of land rent and rates. The applicant who is acting in person stated during the hearing of the application that she does not want the respondent on the property. That she wants her to go away but she is ready to let her grandchildren stay on the suit property.

10. Contrary to the applicant's contention that there is construction going on, there is nothing like that. The respondent has annexed photographs of an old permanent house. The applicant herself has conceded that the respondent is residing on the suit premises and that she is collecting rent. All other sons of the applicant have been given portions on the suitland.

11. The principles for grant of injunction are well settled. An applicant must demonstrate that he/she has a prima facie case with probability of success. An injunction will not normally be issued if the applicant will not suffer loss which will not be compensated in damages. If the court is in doubt, it will decide the application on a balance of convenience. *See Giella -vs- Cassman Brown & Co. Ltd [1973] EA 358.*

CONCLUSION

12. The present application does not meet the threshold in the Giella Case [Supra]. What the applicant is seeking to do is to evict the respondent before this case is heard and determined. It is clear that the applicant is on the suitland. She has put up permanent structures. I therefore find that the applicant's application lacks merit. The same is hereby dismissed with costs to the respondent.

Dated, signed and delivered at Kitale on this 7th day of **November, 2016.**

E. OBAGA

JUDGE