



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC CIVIL SUIT NO. 116 OF 2014

STELLA NYAKIO NGUGI (SUING AS THE ADMINISTRATOR AD LITEM OF

THE ESTATE OF MICHAEL RUKUNGA MOWESLEY)PLAINTIFF/APPLICANT

VERSUS

- 1. SAMUEL OSEBE KINANGA**
- 2. THE REGISTRAR OF TITLES MOMBASA**
- 3. THE ATTORNEY GENERALDEFENDANTS.RESPONDENTS**

RULING

1. The applicant moved this Court by way of notice of motion brought under Order 40 and 50 rule 1 of the Civil Procedure Rules and section 1A and 3A of the Civil Procedure Act. In the motion, she asks this Court to grant the following orders;
 - 1) Spent
 - 2) That pending the hearing and determination of the main suit, the Court do grant an order of temporary injunction against the 1st defendant from interfering or dealing with the suit land whether by himself or through the servants and or employees.
2. The application is premised on five grounds listed on the face of it and the affidavit of Stella Nyakio Ngugi. The applicant deposes that she is the administrator of her husband's estate the late Michael Rukunga Mowesley. That the deceased was sick for a consecutive period of twenty (20) years before passing on on 16th February, 2014. She deposed further that the respondent took advantage of the sickness and obtained the title of the suit property plot No. Msa/Thathini 4/51. Lastly that being a widow, she is not well placed to engage in struggles with the defendants who are depriving her and the children their inheritance. She urged the Court to give an order canceling the offending entries in the registry and orders of temporary injunction against the 1st defendant.
3. The application is opposed by the 1st defendant to whom the orders sought are directed against. The 1st defendant deposed that he got information from his friends that Mr. Michael Rukunga – deceased wanted to sell his plot. He met the seller and they negotiated and agreed on the purchase price. The 1st respondent continued that a sale agreement was drawn and he annexed a copy. Further the 1st respondent deposes that the deceased availed all the documents for transfer and duly executed the transfer form. He denied the transfer was fraudulent and that the applicant has not shown that the late Michael Mowesley was of unsound mind. The 1st respondent also introduced two names Halima and Maria Teresa Mowesley whom he depones he was told are the

- wives of the late Michael. He urged the Court to dismiss the application for failing to meet the threshold of granting of injunctions.
4. This Court is tasked to determine whether the applicant has met any of the laid down principles before an order of injunction can issue. The applicant has deponed that the late Michael was sick for twenty years and therefore the 1st respondent took advantage of him. However no medical evidence was annexed to demonstrate this. The allegations of fraud can only be proved by laying of evidence and may not be easy to prove at an interlocutory stage. The applicant has pleaded that if the orders sought are not granted, the beneficiaries of the Estate of Michael will suffer irreparable loss. The nature of this loss is not explained. Further the value of this land is quantifiable therefore the applicant can get remedy in the event her suit succeeds against the defendants.
 5. On the principle on whose favour convenience tilts, the applicant did not plead what she is doing on the land. There is no indication on what activities the 1st defendant is undertaking on the suit parcel that does prejudice her case. Further the Court cannot issue an order of cancellation of the 1st respondent's title at an interlocutory stage and without giving him a hearing. The balance of convenience I find to tilt in the title remaining in the name of the 1st respondent pending determination of the suit. In conclusion I find the application has not established any of the principles for this Court to grant the orders sought. It is lacking in merit and accordingly dismiss it but with no order as to costs.

Ruling signed, dated and delivered this 9th day of July, 2015.

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A. OMOLLO

JUDGE

In the presence of:-

Learned Counsel for the Plaintiff

Learned Counsel for the Respondent

Court Assistant