



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE

CIVIL SUIT NO. 79 OF 2015

PENROSE SHILASALA NAMISI PLAINTIFF/APPLI

VERSUS

THE COUNTY GOVERNMENT OF TRANS-NZOIA..... 1ST DEFENDANT / RESP

COUNTY PUBLIC SERVICE BOARD TANS-NZOIA 2ND DEFENDANT/RESP

RATILAL GOSAR GODHIA 3RD DEFENDANT/RESP

VIPUL RATILAL 4TH DEFENDANT/RESP

AVIR KANTI SHAH 5TH DEFENDANT/RESP

R U L I N G

1. The applicant filed a notice of motion dated **8.1.2015** in which she sought an injunction against the first and second respondents restraining them, their agents, servants or persons acting on their behalf from transferring, selling, charging, constructing, approving tenders or in any other way dealing and / or altering the condition of all the immovable property known as **Kitale Municipality Block 7/20**.
2. The third , fourth and fifth respondents are the ones who transferred **LR. No Kitale Municipality Block 7/20** (suit land) to the first respondent. The third, fourth and fifth respondents had purchased the suit land from one **Benjamin Nyamumbo Oonge**. The applicant contends that she was married to the said **Benjamin Nyamumbo Oonge** and that the sale of the suit land to the third, fourth and fifth respondent by her husband and the eventual transfer of the same to the first respondent was done without her consultation as spouse of **Benjamin Nyamumbo Oonge** with whom she had one girl child. She contends that the said transaction involving the suit property has deprived her of her rights as a married woman under the **Married Woman Property Act**.
3. The applicant contends that she applied for an injunction to preserve the status quo in **Kitale Environment and Land Case No.136 of 2014** but that the court dismissed the application. She has since preferred an appeal to the Court of Appeal at Eldoret which appeal is yet to be determined. The applicant contends that she had acquired the suit land jointly with her husband and that they intended to put up a private hospital. She further contends that she was not given any money by her husband or the purchasers of the property and that she has been deprived of her share in the property.
4. The applicant's application is opposed by the first and second respondents through grounds of opposition filed on **15.7.2015**. The third, fourth and fifth respondents have also filed grounds of

opposition dated and filed on **15.7.2015**. All the four respondents contend that the present application by the applicant is res judicata, the applicant having filed a similar application in Kitale Environment and land Case **No. 136 of 2014** which application was finally determined. The respondents also contend that the application is an abuse of the process of the court . The respondents further contend that the applicant has no cause of action against the respondents and that in any case she has no locus standi to bring this suit.

5. I have considered the applicant's application as well as the grounds of opposition by the respondents and the submissions by the counsel for the parties herein. The first issue which emerges for determination is whether this application is res-judicata. **Mr. Onyinkwa** for the applicant argued that this application is not res judicata because the parties in the former suit are not the same as in the present case. In the former suit, the present applicant was the plaintiff and the applicant as in this case. The third, fourth and fifth defendants in the present case were also defendants in the former suit. What has changed is that there is an addition of two defendants who are the first and second respondents. The name of **Benjamin Nyamumbo Oonge** who was the first defendant in the former case has been left out in this case. However the fact remains that the subject matter in the previous suit as in the present one is the same.
6. The application in the previous suit was made based on the ground that the applicant was married to **Benjamin Nyamumbo Oonge** and therefore should have been consulted before the suit land was sold. This is the same argument which is being raised in this application as a basis for the orders the applicant seeks. I therefore find that this application is not only resjudicata but also an abuse of the process of the court. This court gave reasons why it found that the applicant was not a spouse of **Benjamin Oonge** in the previous application. That ruling is subject of an appeal and the applicant cannot be allowed to urge another application on the same grounds. This is enough to dispose of this application but I will briefly consider whether the applicant has demonstrated that she is entitled to an injunction.
7. The Principles for grant of a temporary injunction are well settled. An applicant must 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 will suffer loss which will not be compensated in damages. Thirdly if the court is in doubt, it will decide the application on the balance of convenience. The suit land has already been registered in the name of the first respondent. The first respondent is in the process of building up the property into a referral hospital. It is said that tenders have been advertised. The applicant seems to be complaining that the first respondent bought the suit land at inflated prices. She has not demonstrated what interest she has in the property. Her only argument is that she is a wife of **Benjamin Nyamumbo Oonge**. This court in the previous ruling found out that she was not a spouse of **Benjamin Nyamumbo Oonge**. **Mr. Onyinkwa** argued that a woman can have two husbands. I do not think he was serious on this submission. There is no law in Kenya which allows a woman to have two husbands. The applicant has admitted that there is a pending divorce between her and one **GO** at Eldoret Court. If this is the case, then it is difficult to understand how again she can claim to be wife to **Benjamin Nyamumbo Oonge**. The property has already been sold out. If it turns out that she was entitled to a share of the property, then she can easily be given a portion of the proceeds which her said husband received. This can be recoverable from her said husband. I therefore do not find that she will suffer loss which will not be compensated in damages.

I find that the applicant's application is not only resjudicata but is an abuse of the process of court. The same is hereby struck out with costs to the respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this 16th day of September 2015.

E. OBAGA

JUDGE

In the presence of Mr. Onyinkwa for Applicant, Professor Sifuna for 1st and 2nd Respondents and Mr. Wanyama for the 3rd, 4th and 5th Respondents. Court Assistant – Winnie.

E. OBAGA

JUDGE

16.9.2015