



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 80 OF 2013**

**ROSEMARY ATIENO OUMA : : : : : PLAINTIFF**

**VERSUS**

**1. SEPHANIA OUMA OKUMU )**

**2. NAFTALI OUMA OJUOGA ) : : : : : DEFENDANTS**

**R U L I N G**

1. The applicant is the wife of the second respondent Naftali Ouma Ajuoga. The first respondent is a male adult who purchased Plot No. 5377 at Tuwan Rural Urban Project (suit land) from the second respondent. The applicant filed a notice of motion dated 25th June, 2013 in which she sought for injunction orders restraining the first respondent from carrying out any developments on the suit land.
2. The applicant contends that in 2003 she took a loan of Kshs.10,000/= from K-Rep bank which monies she entrusted to her husband to purchase a family plot. The applicant's husband was jobless by then having relocated from Nairobi to Kitale in 1992. Her husband then proceeded to buy the suit land from one Kiprono Arap Byegon for Kshs.42,000/=. Kshs.10,000/= was paid on execution of the agreement and the balance was to be paid in instalments. The applicant was a witness to the sale agreement between her husband and Kiprono Arap Byegon.
3. The applicant and her husband cleared the balance of the purchase price but because there was no money to develop the plot they left it the way it was. In May, 2013, the applicant passed by the plot and noticed that someone had accumulated building materials on it. She sought to know who had done that. The first respondent then came forward claiming that he had bought the plot from the applicant's husband. When the applicant confronted her husband with the information, the husband initially denied any involvement but he later owned up when he was summoned to the office of the area chief. It is after this that she moved to court and filed this application seeking to bar the first respondent from continuing with his plans to construct on the suit land.
4. The first respondent opposed the application through replying affidavit sworn on 15/8/2013 and filed in court on 19/9/2013. The first respondent contends that he bought the suit property from the second respondent at Kshs.45,000/= and that he did not know that the purchase was to bring any problems. The first respondent contends that if the court is going to grant the applicant's prayers, then the second respondent should be ordered to refund him the purchase price at the

current market rates and the expenses he has incurred so far.

5. I have carefully considered the applicant's application as well as the replying affidavit of the first respondent. The principles for grant of interlocutory injunction are now well settled. First an applicant must show a prima facie case with a probability of success. Secondly an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience (**see Giella -Vs- Cassman Brown (1973) EA 358**).
6. In the present case, the applicant has demonstrated that she was present when the suit property was bought. The husband has not denied that the property was bought from a loan secured by the applicant. The applicant was a witness during the purchase of the suit property. The applicant has also demonstrated through her list of documents that she had savings with the bank at the material time when the property was purchased. The property was purchased for the benefit of the family and if there was to be any sale of the same, the applicant should have been involved.
7. The first respondent appears to understand that it was important to bring on board the applicant that is why he is not seriously fighting the applicant's application. The first respondent is only keen on having a refund of the purchase price and the expenses incurred. This of course is not for determination at this stage. I find in the circumstances that the applicant has demonstrated that she has a prima facie case with probability of success. I allow the applicant's application in terms of prayer 2 of the application dated 25/6/2013. The injunction shall remain in force until the determination of this suit. I will not give any costs as none were prayed for.

It is so ordered.

**Dated, signed and delivered at Kitale on this 22nd September, 2014.**

**E. OBAGA**

**JUDGE**

**In the presence of Mr Momanyi for M/S Nyakibia for respondent. Court Clerk – Kassachoon.**

**E. OBAGA**

**JUDGE**

**22/9/2014**