



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L NO. 283 OF 2013

R. R. C.....PLAINTIFF

VS

J. T. T.....DEFENDANT

RULING

The application before me is a Motion dated 14 May 2013 filed by the plaintiff. It is an application brought inter alia vide the provisions of Order 40 Rule 1,2,3 and 4 of the Civil Procedure Rules. The plaintiff seeks to have an order of injunction issued to restrain the defendant from disposing of, alienating, meddling and or interfering in any way with the land parcel [particulars withheld] which land is registered in the name of one W.R (Deceased) pending the hearing of this suit.

The application is supported by the affidavit of the Plaintiff. The defendant has not entered appearance to this suit. Neither has she filed Defence nor any response to the subject application.

Although the application is unopposed by the defendant, it does not mean that it must automatically be allowed; I still need to be satisfied that the applicant has met the test set out in *Giella v Cassman Brown (1973) EA 358*. In the said case, the principles for the grant of an injunction were elaborated. Before the applicant may be granted the injunction sought, she must demonstrate a prima facie case. I ought also be alive to the principle that an injunction will not normally be granted where damages can be an adequate remedy, and finally, if I will be in doubt, decide the application on a balance of convenience.

The applicant's case is discernable from the plaint and the affidavit in support of this application. The plaintiff is the brother to W. R (Deceased) and he holds a grant of letters of administration ad litem to the estate of the said R, limited for purposes of filing this suit. The said R died on 1st January 2000. The defendant is the widow of the said R. The plaintiff has averred that from the year 2005, the defendant has been selling a portion of the land parcel [particulars withheld] to strangers without having filed a succession cause to the estate of the said W. R. The plaintiff has annexed copies of the certificate of title to the said land and three sale agreements said to have been entered into by the defendant. The plaintiff has deponed that the deceased left young children who are still under the age of 18 years and unless the property is preserved, the children as beneficiaries of the estate stand to suffer greatly. The plaintiff has annexed a letter from the Chief of Kabarnet Location showing the dependants of the deceased. In the plaint the plaintiff has sought orders to have the defendant permanently restrained from disposing of the suit land and for costs of the suit.

I have considered the application. I have seen that the land parcel [particulars withheld] is registered in the name of W. R who is now deceased, having died on 1st January 2000. The plaintiff has stated that there has been no succession matter filed on behalf of the estate of the deceased. The letter from the Chief shows that the deceased left four children who are aged between 17 years and 11 years as at 25th March

2010. There is no doubt that some of them are still minors at present. I have also perused the annexed agreements of sale that have allegedly been entered into by the defendant. They are three in number and they are agreements entered into by the defendant and some third parties.

Section 45 of The Law of Succession Act, CAP 160, Laws of Kenya, prohibits the intermeddling of the property of a deceased person. Neither is there power to dispose of land without there being a confirmed grant of letters of administration or with the permission of the court. It is therefore apparent that the defendant is engaged in an illegality. This is unfortunate as the defendant is the widow to the deceased. I would have passed off the defendant as a busy-body but I think he has a legitimate case, that the defendant is disposing of the estate of the deceased and the children of the deceased who are minors, may very well find nothing if the acts of the defendant are not curbed.

I think the plaintiff has set out a prima facie case for the protection of the estate of the deceased. I therefore grant the injunction sought and order the defendant not to sell, lease or in any other way dispose of the land parcel[particulars withheld] until the final determination of this case. The defendant did not have capacity to sell the suit land and any person who purported to have purchased cannot allege to hold any proprietary interest. The purported purchasers are assigns of the defendant and they are also barred from any interference with the estate of the deceased.

The costs of this application shall be costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 20TH DAY OF JUNE 2013

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Read in open Court

In the Presence of:-

N/A for Ms Tarus & Co for the plaintiff

N/A for defendant who has not entered appearance