



**Muiru & 3 others v Onesmus (Environment & Land Case
61 of 2022) [2023] KEELC 844 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 844 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 61 OF 2022
A OMBWAYO, J
FEBRUARY 16, 2023**

BETWEEN

**FRANCIS KINUTHIA MUIRU 1ST PLAINTIFF
CHRISTINE MUTHONI WANJEMA 2ND PLAINTIFF
ERIC MURIU WANJEMA 3RD PLAINTIFF
JEAN GATHONI WANJEMA 4TH PLAINTIFF**

AND

MICHAEL WANJIHIA ONESMUS DEFENDANT

RULING

Brief Facts

1. The Applicant filed the instatn application dsated October 31, 2022 seeking the followeing orders:
 1. Spent.
 2. Spent.
 3. That pending the hearing and determination of the main suit herein, this Hon. Court be pleased to grant the plaintiffs an order of prohibition and injunction prohibiting any dealings over the land with any other 3rd parties and injuncting and/or restraining the defendant against alienating, selling or permitting encroachments and/or restraining the defendant against alienating, selling or permitting encroachments and/or interference in any way of all that parcel of land known as Nakuru Municipality Block 4/493 registered in the name of the defendant.
 4. That this Hon. Court be pleased to grant the plaintiffs any other / such other/further orders as it may deem fit/just to grant in the circumstances of this matter.



5. That the costs of this application be provided for.
2. The Application was based on grounds set out and supported by the Affidavit of Dr. Francis Kinuthia Muriu, the 1st Plaintiff herein sworn on October 31, 2022. He stated that the Defendant is their elder brother. That the firm entered appearance and filed the necessary defence documents. The applicant laments that the suit property Nakuru Municipality Block 4/114 has been subdivided by the Defendant into two parcels which unless cancelled by this court, the interest of his deceased brother shall be compromised when the Defendant sells his portion. In conclusion, the 1st Plaintiff urged the court to allow the prayers sought in the application.

Respondent

3. The Defendant did not file any response to the application.

Submissions

4. The parties did not file submissions as ordered by the court.

Analysis and Determination

5. This court has looked into the application and is of the view that the main issue for determination is whether the Plaintiff has met the threshold for grant of an injunction.
6. I have considered the application for injunction and the same is unopposed. The principles upon which the court may consider an application for injunction were laid out in the case of *Giella v Cassman Brown* (1973) EA 358. The applicant must first demonstrate a prima facie case with a probability of success; secondly, the court will not normally grant an injunction unless the applicant stands to suffer irreparable loss which cannot be compensated by an award of damages; and finally where there is doubt the court decides the matter on a balance of convenience.
7. The essence of an application for injunction is for the court to make an order on how the subject matter of the suit ought to best to be preserved pending the substantive hearing of the matter.
8. This court has perused the pleadings and noted that as from the certificate of confirmation of grant dated 18th June, 2008, the suit property is to be distributed to both the 1st Plaintiff and Defendant in equal shares. The Plaintiffs' filed a plaint dated 31st October, 2022 and sought for cancellation of the subdivided titles that emanated from the suit property. The Plaintiff alleges that the Defendant secretly divided the suit property and intends to sell his portion. The Defendant has not filed any response to this allegation despite service.
9. This court cannot tell at this stage whether such sale or intended sale has or will take place. However, from the material placed before me the Plaintiffs have laid out a prima facie case with a probability of success. In the event that I was to consider the balance of convenience, the same tilts in favour of maintaining the suit property so that its proprietorship does not change, as the matter is yet to be heard. The Plaintiff no doubt stands to suffer irreparable loss if the injunction is not granted pending the hearing of this suit. The balance of convenience in the circumstances of this case lies in favour of preserving the suit property against alienation or selling to third parties.
10. I therefore allow the application and issue an order of injunction restraining the Defendant or any other person in whose name the property and or the resultant properties are registered from selling, leasing or in any other way dealing with the same pending the hearing and determination of this suit. For



avoidance of doubt the County Land Registrar Nakuru is restrained from dealing with the property in any manner whatsoever. The costs of this application shall be in the cause.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 16TH DAY OF FEBRUARY 2023.

A O OMBWAYO

JUDGE

