



REPUBLIC OF KENYA



**Kongoy Farm Ltd v Kipsigei & 12 others (Environment & Land Case
E30 of 2023) [2023] KEELC 18816 (KLR) (17 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18816 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E30 OF 2023
FM NJOROGE, J
JULY 17, 2023**

BETWEEN

KONGOY FARM LTD PLAINTIFF

AND

NICHOLAS CHEBOCHOK KIPSIGEI 1ST DEFENDANT

MILKA MUTHONI MWANGI 2ND DEFENDANT

DAVID KARANJA MWANGI 3RD DEFENDANT

BRIAN MUNDIMIA MBUTHIA 4TH DEFENDANT

JOSEPH NJOGU NJOROGE 5TH DEFENDANT

JOHN NDIGIRIGI NDIRANGU 6TH DEFENDANT

JOSEPH KIARIE MWANGI 7TH DEFENDANT

SAMUEL NGIGI NJOROGE 8TH DEFENDANT

TABITHA WAMBUI KIMANI 9TH DEFENDANT

JOHNNSON KARIUKI KONAHA 10TH DEFENDANT

DAVID NGANGA 11TH DEFENDANT

JANE NJERI NJOGU 12TH DEFENDANT

LAND REGISTRAR NAKURU DEFENDANT 13TH DEFENDANT

RULING

1. This is a ruling on an application dated April 12, 2023 filed by the plaintiff under section 1A, 1B, 3A, and 63(e) of the CPA, Orders 40 rule 1 and 51 rule 1 of the CPR. It seeks an order of interim injunction



restraining the defendants and their agents from in any manner interfering with the land described as Ol Jorai LR Nos 8525/7- 8525/19 (hereinafter 'the suit land') inclusive pending the hearing and determination of the instant suit.

2. The grounds relied on are at the foot of the motion and in the supporting affidavit of Abdulrahman Suleiman, the farm manager of the plaintiff company. They are that the plaintiff is the rightful owner of the suit land; that he has been in possession of the land since 1994; that the 1st -12th defendants have fraudulently and illegally obtained certificates of title to it; that some strangers have attempted to enter the suit lands to identify their parcels and demarcate boundaries but their attempts were thwarted by the plaintiff's workers and that the plaintiff's has a prima facie case with high probability of success.
3. The motion is opposed. The 1st defendant filed a replying affidavit on April 25, 2023 on his own behalf and on behalf of the rest of the defendants. He stated that the defendants acquired ownership of the suit property through purchase for consideration of their respective parcels from Lands Limited after conducting due diligence and obtained title after following due process and that they are purchasers for value without notice; that the plaintiff has not held title to property within the area; that the plaintiff has not alleged any fraud against the defendants yet they have certificates of title which can only be nullified on the basis of fraud; that they have taken possession and the orders sought can not issue; that the applicant is guilty of laches; that the plaintiff has not disclosed any prima facie case against the defendants.
4. The 13th defendant entered appearance and filed defence, denying the plaintiff's claim, through Janet Chepkirui, Senior State Counsel appearing on behalf of the Attorney General.
5. The plaintiff filed a supplementary affidavit sworn by one Mohamed Bulle, said to be a director of Lands Ltd on May 12, 2023. In it was stated as follows: that Lands Ltd is a wholly owned subsidiary of ADC; that all land of ADC is held by Lands Ltd; that the suit land had been allocated to the plaintiff more than two decades ago and the plaintiff obtained deed plans letters of consent to transfer which were forwarded to the Corporation vide a letter dated May 28, 1997; that a cheque was made out in favour of the ADC by the plaintiff; that the mother title was somehow misplaced and titles could not issue and there is no indication that provisional title was ever applied for.
6. The plaintiff filed submissions on the application on May 12, 2023 and the 1st -12th defendants on May 22, 2023. I have perused the file and I have found no submissions filed on behalf of the 13th defendant.
7. This appears to be very contentious matter. I have noted that each party has some documents in respect of the suit land but their veracity and the truthfulness of the parties' respective allegations can only be verified at the hearing. The plaintiff lacks title while the defendants have title. I would not in the circumstances state that the plaintiff has established a prima facie case. The defendants claim possession and so does the plaintiff. I would also not find in the circumstances of this application that he would suffer irreparable loss. This court in any event is possessed of jurisdiction to cancel whatever is illegal and that should afford comfort to anyone claiming illegality of documents.
8. In order that no more time is wasted I find that I should apply the test of balance of convenience in this matter, and that balance leans in favour of preserving the suit land. I therefore order that the current status quo on the ground as well as on the land register shall be maintained by all parties pending the hearing and determination of the present suit.
9. The plaintiff shall prepare a duly indexed and paginated bundle of documents and file and serve it within 30 days from today and the defendants shall follow suit within 30 days of service or in any event within 60 days of the date of this order. This matter shall be mentioned on September 28, 2023 for issuance of a hearing date.



DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 17TH DAY OF JULY, 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

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