



Njoroge v Mosiro & another; Kapoya & another (Interested Parties) (Environment & Land Case E034 of 2023) [2023] KEELC 21170 (KLR) (31 October 2023) (Ruling)

Neutral citation: [2023] KEELC 21170 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E034 OF 2023
MN GICHERU, J
OCTOBER 31, 2023**

BETWEEN

JOSEPH MWAURA NJOROGE PLAINTIFF

AND

ESTATE OF THE LATE KAPOYA OLE MOSIRO 1ST DEFENDANT

SIMON MUTUNKEI KAPOYA 2ND DEFENDANT

AND

RAPHAEL SENTERO KAPOYA INTERESTED PARTY

RICHARD MOL KAPOYA INTERESTED PARTY

RULING

1. This ruling is on the notice of motion dated 3/3/2023. The motion which is brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 40 Rule 1 and Order 51 Rule 1 *Civil Procedure Rules* and Article 159 (2) (d) of *the Constitution* of Kenya seeks the following orders.
 4. That a temporary injunction do issue to restrain the Defendants, their agents, servants or employees from trespassing, selling and/or transferring the Plaintiff's portions of L.R. Kajiado/Kitengela/1992, suit land, to any other person until the hearing and determination of the suit.
 5. That a temporary injunction be issued to stop and/or restrain the Defendants/respondents by themselves, their agents, servants, or employees from subdividing or further subdividing the suit land with intent to sell or transfer pending the hearing and determination of this suit.



2. The motion is supported by eleven (11) grounds, a supporting affidavit by the Plaintiff and many annexures. The gist of the above material is as follows.

Firstly, the Plaintiff bought 4.23 acres being portions of the suit land from the Respondents. All the Respondents were beneficiaries of the estate of the late Kapoya ole Mosiro.

Secondly, the various portions were to be excised from the suit land.

Thirdly, the Plaintiff has learnt that the second Defendant has commenced the subdivision of the suit land in breach of the various agreements between him and the Plaintiff.

Finally, unless the application is allowed, the Plaintiff stands to suffer irreparable loss which cannot be remedied by way of damages only.

3. The motion, though served on the firm of Z.N. Gathara Advocates for the Respondents is unopposed.

4. This being an application for injunction, it must meet the threshold of the grant of such an order as per the case of *Giella –versus- Cassman Brown* (1973) E.A. Looking at the first limb of a prima facie case with a probability of success, I find that it does not meet this prerequisite.

Firstly, the capacity of second Defendant to transfer land that was not registered in his name is not demonstrated.

Secondly, the Applicant has not proved that he is in occupation of the portion of the suit land that he purports to have purchased.

Thirdly, he has not shown that he himself has complied with the sale agreements as regards issuing a 21 days notice to the vendor to complete the sale of the suit land. He has not exhausted the remedies under the agreements of sale of portions of the suit parcel.

In the face of all the above, the Applicant cannot be heard to say that an award of damages cannot be adequate compensation.

For the above stated reasons, I find that none of the three prerequisites to the grant of an order of injunction has been made out. I find no merit in the notice of motion dated 3/3/2023 and I dismiss it. Costs in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 31ST DAY OF OCTOBER, 2023.

M.N. GICHERU

JUDGE

