



**Githere v M'munuru & 2 others (Environment & Land Case
26 of 2023) [2023] KEELC 21602 (KLR) (16 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21602 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 26 OF 2023
A OMBWAYO, J
NOVEMBER 16, 2023**

BETWEEN

SALLY GACHONJO GITHERE PLAINTIFF

AND

JEREMIAH KUBAI M'MUNURU 1ST DEFENDANT

BENJAMIN NGUGI NDUNG'U 2ND DEFENDANT

THE LAND REGISTRAR, NAIVASHA 3RD DEFENDANT

RULING

1. Sally Gachonjo Githere has come to this court by way of plaint against Jeremiah Kubai M'Munuru, Benjamin Ngugi Ndung'u and the Land Registrar Naivasha claiming that they illegally and fraudulently transferred here land to themselves. The plaintiff prays for a declaration that the Plaintiff is the legal and registered owner of all that parcel of land known as Kijabe/Kijabe Block L/1103. He prays for an order of rectification of the land register in respect of Kijabe/Kijabe Block 1/1103 to reflect the Plaintiff as the registered proprietor.
2. Moreover, an order for rectification of the land register cancelling the title and registration of parcel of land known Kijabe/Kijabe Block 1/1103 in the name of the 2nd Defendant. Lastly, he prays for a permanent injunction to restrain the Defendants from interfering with the Plaintiffs right of quiet possession to all that parcel of [and known as Kijabe/Kijabe Block 1/1103. Plus costs.
3. The plaintiff further filed a Notice of Motion dated 27th September 2023 praying for an injunction restraining the Defendants whether by themselves, their agents and servants from transferring, selling, interfering, alienating, disposing, charging, entering into, remaining on or otherwise dealing with all that parcel of Land known as Kijabe/Kijabe Block 1/1103 pending the hearing of the case.



4. She prays for a mandatory injunction compelling the 3rd Defendant to produce/avail to the Court all the documents including the parcel file, green card, consents, receipts, valuations, register, court order, transfer and any other documents used by the 3rd Defendant to transfer and register Kijabe/Kijabe Block 1/1103 the 1st Defendant and subsequently in the name of the 2nd Defendant. Plus costs.
5. The application is based on grounds that the Plaintiff is the legal proprietor of the property known as Kijabe/Kijabe Block 1/1103 and has been in possession of the said property since the year 2009. The Defendants have fraudulently transferred the aforesaid Plaintiff's property without her knowledge or consent.
6. The purported transfer of Kijabe/Kijabe Block 1/1103 by the Defendants is fraudulent because the Plaintiff has never signed any agreement to sell Kijabe/Kijabe Block 1/1103. The Plaintiff has never signed any transfer form transferring Kijabe/Kijabe Block 1/1103.
7. The Plaintiff has never applied for Land Control Board consent to sell or otherwise transfer Kijabe/Kijabe Block 1/1103. In view of the foregoing, the Defendants do not have any lawful justification for issuing or procuring or making any document purporting that the 2nd Defendant is the registered proprietor of the suit property.
8. Unless restrained by the Court, the Defendants are likely to sell, alienate, dispose or charge the property to unsuspecting innocent parties thereby making it very difficult if not impossible for the Court and the Plaintiff to reverse the fraudulent registration. The defendants are likely to enter upon, construct, remain on or otherwise interfere with the Plaintiff's quiet possession of the suit property.
9. The 3rd Respondent has refused/declined to avail copies of the parcel file, green card, consents, receipts, valuations, register, court order, transfer and any other documents used to transfer and register Kijabe/Kijabe Block 1/11 the 1st Defendant and subsequently in the name of the 2nd Defendant.
10. To enable the Plaintiff protect and enforce her rights over the suit property, the Plaintiff requires the 3rd Defendant to produce to the Court all the documents including the parcel file green card, consents, receipts, valuations, register, court order, transfer and any other documents used by the 3rd Defendant to transfer and register Kijabe/Kijabe Block 1/1103 in the name of the 1st Defendant and subsequently in the name of the 2nd Defendant. It is in the interests of justice that the prayers sought be granted. The respondents have not filed a replying affidavit despite being served.
11. I have considered the application and reply and do find that the plaintiff has established a prima facie case with a likelihood of success due the fact that the respondent have not demonstrated that they have an agreement of sale. Moreover, there is no consent of the Land Control Board and that there is no transfer instrument. The applicant has demonstrated that if an injunction is not granted she will suffer irreparable loss as the defendants are likely to transfer the land to 3rd parties or charge or sell the same.
12. The balance of compliance tilts towards granting the injunction. I do grant prayers an injunction restraining the Defendants whether by themselves, their agents and servants from transferring, selling, interfering, alienating, disposing, charging, entering into, remaining on or otherwise dealing with all that parcel of land known as Kijabe/Kijabe Block 1/1103 pending the hearing and determination of the suit. Costs in the suit.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 16TH DAY OF NOVEMBER 2023.

A O OMBWAYO

JUDGE

