



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT KERICHO
ENVIRONMENT AND LAND CASE NO.41 OF 2014

KIPKEMOI ARAP KENER.....PLAINTIFF

VERSUS

JOSEPH TOWETT.....1ST DEFENDANT

DAVID MITEI2ND DEFENDANT

DAVID KIPKEMOI TONUI3RD DEFENDANT

JACQUELINE CHEPKOECH.....4TH DEFENDANT

KENNETH KIPLANGAT MUTAI.....5TH DEFENDANT

RULING

(Application for injunction; principles to be applied; plaintiff having entered into a land exchange agreement with 1st defendant; plaintiff claiming that 1st defendant never availed the other land meant for exchange but fraudulently transferred the plaintiff's land to himself; 1st defendant later subdividing the land and transferring to the other defendants; no proof that the plaintiff received the other land; status quo preserved and order of inhibition issued)

The application before me seeks to have the defendants restrained by an order of injunction from dealing with the land parcel Kericho/Itembe/570 now subdivided into the land parcels Kericho/Itembe/ 1455, 1456 and 1454 and further subdivided into the parcels number Kericho/Itembe/1501 and 1502, until the final determination of the suit.

The case of the plaintiff, as discerned in the plaintiff's pleadings and affidavit in support of the application for injunction, is that the land parcel Kericho/Itembe/570 initially belonged to him and was registered in his name. He avers that in the year 2013, he entered into a land exchange agreement with the 1st defendant through which the plaintiff agreed to surrender his said land parcel with 35 acres of land situated in Narok South said to be owned by the 1st defendant. The plaintiff has pleaded that he physically pointed out the land parcel Kericho/Itembe/570 to the 1st defendant and gave the 1st defendant all its details, but the 1st defendant never pointed out to him the land in Narok South and never put him in possession. The plaintiff has averred that the 1st defendant used his influence as an employee at the Ministry of Lands to transfer the property to the 2nd defendant. He contends that he never signed any

documents of transfer in favour of the 1st defendant. He has also averred that no Land Control Board consent was ever granted.

The plaintiff has deposed that on 24 April 2014, he went to the office of the District Land Registrar, Bomet, to ascertain the position of his land only to find that the same is now in the name of the 2nd defendant. On 5 May 2014, he placed a caution on the land which he asserts has never been lifted. The 2nd defendant later proceeded to subdivide the land parcel Kericho/Itembe/570 into the land parcels Kericho/Itembe/1454, 1455 and 1456 which titles were all issued in his name. The parcel No. 1455 was on 6 January 2015 transferred to the 5th defendant. The parcel No. 1456 is still in the name of the 1st defendant. The parcel No. 1454 was subdivided into the plot numbers 1501 and 1502 which are now in the name of the 3rd defendant and 4th defendant. It is his position that the transfer of the land to the 1st defendant and the latter subdivisions and subsequent transfers to the other defendants was fraudulent. In this case, the plaintiff essentially wants back his land and the eviction of the defendants from these parcels of land.

In their defence, the defendants refuted the claims of the plaintiff. It is pleaded that the plaintiff was shown 25 acres of land in Narok and put in possession. The relevant title documents are also said to have been given to the plaintiff. They also opposed the application of the plaintiff through the replying affidavit of the 1st defendant. He has deposed that he did give out to the plaintiff the land in Narok and the plaintiff gave him the land in Kericho. The land was then properly transferred to him and he proceeded to sell some of it to the other defendants. On the caution, he has stated that the same was procedurally removed after notice. He annexed the documents of transfer and consent of the Land Control Board. It is his view that the plaintiff has no case against him.

I have considered the application. This is an application for injunction and I stand guided by the principles laid down in the case of ***Giella vs Cassman Brown (1973) EA 358***. In the said case it was stated that to succeed in an application for injunction, the applicant must demonstrate a prima facie case with a probability of success; show that he stands to suffer irreparable loss if the injunction is not allowed; and if in doubt, the court will decide the application on a balance of convenience.

I have assessed the material presented before me by both plaintiff and defendants. The exchange agreement is actually not denied although the plaintiff claims that he was never given the land in Narok and he never signed any transfer to the 1st defendant. These are of course refuted by the defendants. I have however not seen anything from the defendants showing that there was any land in Narok that was ever given to the plaintiff by the 1st defendant. These are contested facts which I prefer to leave for determination at the full trial. I think it is best that this application be decided on a balance of convenience and in my opinion, the balance of convenience tilts towards maintaining the status quo. The properties also need to be preserved by an order of inhibition to stop any further dealings or else the subject matter of the suit may fundamentally change character.

I therefore make the following orders :-

(i) The current status quo as to occupation of the land parcels Kericho/Itembe/1455, 1456 and Kericho/Itembe/1501 and 1502 be maintained pending hearing and determination of this suit.

(ii) That there is hereby issued an order of inhibition, inhibiting the registration of any disposition in the register of the land parcels Kericho/Itembe/1455, 1456 and Kericho/Itembe/1501 and 1502 pending final determination of the suit.

(iii) The costs of the application shall be costs in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 28TH DAY OF OCTOBER, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

In the presence of:-

Mr. Caleb Koech for the Plaintiff/Applicant.

No Appearance on part of Defendants/Respondents.

G. Wambany Court assistant.