



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT NAIROBI

ELCC/E375 OF 2021

ALLAN WACHIRA MWANGI.....PLAINTIFF

VERSUS

MACHARIA GATIBA.....1ST DEFENDANT

EMBAKASI RANCHING COMPANY LIMITED.....2ND DEFENDANT

RULING

1. Coming up before me for determination is the Notice of Motion dated 5/11/2021 brought under Article 40 (1) & (2) of the Constitution and Order 40 Rule 2 of the Civil Procedure Rules 2010 of the Civil Procedure Act (Cap 21) Laws of Kenya.

2. The Plaintiff/Applicant seeks for the following orders:

(1) Spent

(2) Spent

(3) *That the Honorable Court be pleased to grant a temporary injunction restraining the Defendants, their employees, servants, agents and/or assigns or any other person claiming through them from trespassing, encroaching, developing, transferring, encumbering, issuing title or dealing in any manner with Plot Number N236. MAP 7 covering LR 1094/situated within Nairobi County which belongs to the Plaintiff/Applicant or in any other manner altering records at the Nairobi land registry pending the hearing and determination of this suit.*

(4) *That the Honorable Court be pleased to direct that status quo be maintained pending hearing and determination of this Application*

(5) *That the Honorable Court do direct that the Orders be enforced by the OCS Ruai Police station*

(6) *That the costs for this Application be provided for.*

3. The grounds are on the face of the application and are listed at paragraphs 1 to 4.

4. The application is supported by the affidavit of Allan Wachira Mwangi, the plaintiff/applicant herein sworn on 5/11/2021.

5. The defendants/respondents were duly served with pleadings and the application. The affidavit of service is duly filed. They neglected to enter appearance and/or file defence or responses to this application. The application therefore stands unopposed.

6. It is the plaintiff's/applicant's case that he is the bona fide owner of Parcel of Land known as Plot Number N236. MAP7 covering LR 1094/2 situated within Nairobi County having held uninterrupted possession since September 2009 when he purchased the said plot from one Salome Njoki through Embakasi Ranching Company Limited, the second defendant herein.

7. That sometime in 2010 and on 3rd November 2021 the 1st defendant trespassed on the aforesaid plaintiff's parcel of land without consent from the plaintiff purporting to possess ownership documents to the plot issued by the 2nd defendant which title he has failed to produce to support his claim.

8. Further the plaintiff alleges fraud by the defendants and he avers that the defendants have irregularly procured a title to the plaintiff's property with the intention of alienating it. Further the plaintiff contends that the 1st defendant has attempted to take possession of the suit property in the pretext that he has ownership documents issued by the 2nd defendant.

9. As earlier stated the application is not opposed

10. The principles upon which this court exercises its discretion in application for a temporary injunction are now well settled. An applicant for a temporary injunction must establish that he has a prima facie case against the respondent and that he stands to suffer irreparable harm which cannot be compensated in damages if the order is not granted.

11. If the court is in doubt as to the above, the application would be considered on a balance of convenience. See the case of **Giella v. Cassman Brown & Co. Ltd (1973) E.A. 358**

12. I am satisfied that the plaintiff has established a prima facie case against the defendants with a probability of success. The plaintiff has demonstrated that it acquired the suit property on 7/09/2009 through Embakasi Ranching Company through Salome Njoki. He paid the requisite fees and commission and he took possession.

13. The issue of who owns the suit property as between the plaintiff and 1st defendant can only be determined at trial. I am also satisfied that the plaintiff is likely to suffer irreparable harm which cannot be compensated in damages. The plaintiff placed before the court uncontroverted evidence that the defendant had already commenced excavation work with a view to construction a permanent house on the said plot. It is necessary that the property be preserved pending the hearing and determination of the suit.

14. For the foregoing reasons I find merit in this application and grant the orders sought namely:

a) That a temporary injunction be and is hereby issued restraining the defendants, their employees, servants, agents and/or assigns or any other person claiming through them from trespassing, encroaching, developing, transferring, encumbering, issuing title or dealing in any manner with Plot Number N236. MAP 7 covering LR 1094/situated within Nairobi County which belongs to the plaintiff/applicant or in any other manner altering records at the Nairobi land registry pending the hearing and determination of this suit.

b) The costs of this application to be borne by the defendants/respondents

It is so ordered

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF FEBRUARY, 2022

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MOGENI

JUDGE

In the presence of

Ms. Njue for the Plaintiff/Applicant

N/A for Defendant/Respondents

Mr. Vincent Owuor - Court Assistant