



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

ELC NO. 12 OF 2013

FRANCIS NTORURU & 8 OTHERS.....PLAINTIFFS

VERSUS

FRANCIS MITHIKA & 6 OTHERS.....DEFENDANTS

RULING

This application is dated 12th January 2013 and is predicated upon sections 1A, 1B, 3, 3A and 63 of the Civil Procedure Act and Order 40 of the Civil Procedure Rules. It seeks the following orders:

1. ***THAT*** this application be certified as urgent and be heard *ex parte* in the first instance.
2. ***THAT*** pending the hearing of this application *inter partes* this Honourable Court be pleased to issue an order of injunction restraining the 1st to 5th defendants either by themselves, their servants and/or agents from entering, trespassing demarcating, alienating, selling or in any way interfering with land parcels Nos.1141, 354, 3686, 3687, 3688, 3689, 3690, 3691, 3692, 3693, 2675 and 3622 ANKAMIA ADJUDICATION SECTION.
3. ***THAT*** pending the hearing of this suit *inter partes* this Honourable Court be pleased to issue an order of injunction restraining the 1st to 5th defendants either by themselves, their servants and/or agents from entering, trespassing demarcating, alienating, selling or in any way interfering with land parcels Nos.1141, 354, 3686, 3687, 3688, 3689, 3690, 3691, 3692, 3693, 2675 and 3622 ANKAMIA ADJUDICATION SECTION.
4. The costs of this application be provided for.

It has the following grounds:

- a. ***The plaintiffs are the registered owners of their respective parcels of land.***
- b. ***That the plaintiffs are in actual possession and occupation of their respective parcels of land and have carried out extensive development.***
- c. ***That the 1st to 5th defendants are unlawfully interfering with the plaintiff's quiet.***
- d. ***That the 1st to 5th defendants know their case was not proper and wish to dispose of the land fast and have therefore brought prospective buyers to view the suit land.***

e. That it is only fair and just to preserve the suit land and protect the plaintiffs/applicants until the suit is determined.

f. That the 1st to 5th defendants had no history of claim of the suit lands during the lifetime of the original owner.

The plaintiff's case is that all the lands in dispute including Land Reference Numbers 1411, 354, 3686, 3687, 3688, 3689, 3690, 3691, 3692, 3693, 2675, and 3622 Ankamia Adjudication section originally belonged to one Mwereria Kinguru. They say that the parcels of land were properly transferred to them by the deceased original owner. However in or about the month of October, 2012, the 1st, 2nd, 3rd, 4th and 5th defendants unlawfully and fraudulently colluded in objections marked as 1445, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120 and 121 whereof the 6th defendant unlawfully ordered that the plaintiffs' respective land parcels be split to give the 1st to 5th defendants land from the plaintiffs. As a result the 1st to 5th defendants got 12 acres and the 3rd and 8th defendants got 7 acres making it a total of 19 acres. Following this decision, the plaintiffs who had a total of 29 acres among themselves were left with only 10 acres and have, therefore, suffered loss and damages.

The defendants have opposed this application. They have proffered a diametrically opposed story.

They state that the suit parcels had been wrongly registered in the name of M'Mwereria Kinguru, the deceased original registered owner, when they actually should have been registered in their names. They, as such, claim that the original registered owner held the suit parcels of land in trust for them. They aver that the transfer of the suit parcels to the plaintiffs was wrongful *ab initio* as their deceased father M'Mwereria Kinguru, held the original parcel in trust for them. They then aver that they acquired their land lawfully through objections 11 to 121 and that there was nothing unlawful in the 6th defendant deciding the objections.

The plaintiffs have deponed that the 1st to 5th defendants failed to disclose to the 6th defendant that the deceased original registered owner M'Mwereria Kinguru had given all of them their shares of land before he died. They opine that objections 110 to 121 were filed fraudulently.

The plaintiffs claim that they are in actual possession of the disputed parcels of land. The defendants, on their part, claim that they were in actual possession of the Original Parcel No. 1411 and that they have made extensive developments.

The defendants say that objection numbers 110 to 121 and the land parcel numbers quoted are non-existent. They also state that the Land Adjudication Officer's annexed consent quotes numbers 11229, 3691, 2382, 11230 and 1842. They submit that the application and the orders sought do not tally with the plaint and its annexures. I do agree that this is the case.

I do not need to reinvent the wheel. The court of Appeal in the case of **MBUTHIA VS JIMBA DREDIT CORPORATION & ANOTHER [1988 KLR1. OPINED AS FOLLOWS:**

“The correct approach in dealing with an application for an interlocutory injunction is not to decide the issues of fact, but rather to weigh up the relevant strength of each side's propositions. The lower court judge in this case had gone far beyond his proper duties and made final findings of fact on disputed affidavits.”

The parties have made assertions and counter assertions. The veracity of many of the assertions can only be established after the main suit has been heard.

Weighing up the relative strengths of the assertions postulated by the parties and having considered the averments and submissions of the parties, I decline to grant the prayers sought in this application. I, therefore, dismiss the application.

I do note that on 14.3.2013, the parties, by consent, agreed that the status quo be maintained until

this application is heard and determined. It seems to me that the order of status quo has served the parties well for close to 2 years. I, therefore, in terms of section 63 of the Civil Procedure Act, order that status quo as obtained in or before 15.3.2013 be maintained until this suit is heard and determined.

Costs shall be in the cause.

It is so ordered.

Delivered in open court at Meru this 14th day of January, 2015 in the presence of:

Cc. Daniel/Lilian

Miss Gituma for plaintiff/Applicant

Kambi h/b Ayub Anampiu for 1st to 5th Defendants/Respondents

Miss Makori present for 6th and 7th Respondents.

P M. NJOROGE

JUDGE