



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 343 OF 2014

PATRICK NGORO MWAURAPLAINTIFF

VERSUS

LUCY WAMBUI NGOORO.....DEFENDANT

RULING

(Application for injunction; principles to be applied; plaintiff claiming to have been registered as owner of land; contention that the defendant forged the plaintiff's signatures and had the properties transferred to her; no reply by defendant; prima facie case established; application for injunction allowed).

1. This suit was commenced by way of plaint filed on 15 December 2014. Together with the plaint, the plaintiff filed an application for injunction, seeking to stop the defendant from any further dealings with the land parcels Nyandarua/Matindiri/968 and 1182, pending hearing of this suit. Despite being served, the defendant has neither entered appearance nor replied to the subject application.
2. For the plaintiff to be entitled to an order of injunction, I need to be satisfied that he has established a prima facie case, that he stands to suffer irreparable loss if the injunction is not granted, and if I will be in doubt, I will decide the application on a balance of convenience. This is following the principles laid down in the case of ***Giella v Cassman Brown (1973) EA 358***.
3. The case of the plaintiff is that the two suit properties belong to him and that he was registered as proprietor on 21 January 2011 and 12 July 2013 respectively. It is contended that the defendant fraudulently caused the transfer of these two properties into her name on 29 September 2013 and 26 May 2014. Various particulars of fraud are pleaded, including the allegation that the defendant forged the plaintiff's signatures, and further obtained registration without the consent of the Land Control Board. The defendant happens to be the wife of the plaintiff but it is said that she moved out of the matrimonial home together with her belongings.
4. In his supporting affidavit, the plaintiff has deposed that he only came to know about these happenings when some strangers came to the properties to inspect them with the information that the owner wanted to sell them off. It is then that the plaintiff checked his drawers and found the title deeds missing. He conducted a search which revealed that the properties have been transferred to the defendant.
5. As I mentioned earlier, the defendant has not responded to the subject application nor has she filed any document in respect of this suit. The plaintiff's contentions are therefore uncontroverted. If indeed the defendant procured registration by way of fraud, as the case seems to be, from the facts tendered by the

plaintiff, then certainly her titles are subject to cancellation. This is following the provisions of Section 26 of the Land Registration Act, 2012. I am of the opinion that the plaintiff has tendered a prima facie case with a probability of success.

6. I therefore allow this application. I make the following orders:-

- (a) An injunction is hereby issued, barring the defendant from offering for sale, selling, charging, leasing, or in any other way dealing with the title to the land parcels Nyandarua/Matindiri/968 and 1182 until the conclusion of this case.
- (b) An order of inhibition is hereby issued, barring the registration of any disposition in the register of the land parcels Nyandarua/Matindiri/968 and 1182 until further orders of this court.
- (c) The costs of the application shall be costs in the cause.

It is so ordered.

Dated, signed and delivered in open court at Nakuru this 30TH day of June 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

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In presence of: -

N/A for M/s Njuguna Kamango & co advocate for plaintiff/applicant.

N/A for defendant who has not entered appearance.

Janet: Court Assistant

MUNYAO SILA

JUDGE

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