



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

E & L NO 100 OF 2014

SHERAI GURAM HUSSEIN HABIB PARPIA(Suing through his guardian/trustees

AOSHA PARPIA, NUREN PARPIA & SAMEERA PARPIA.....PLAINTIFF

VERSUS

JOHN NDUMBA

THARAMBA.....DEFENDANT

R U L I N G

1. This Application is dated 14th April, 2014. The Application states that it is brought to Court under Order 40 Rule 1 and Order 50 Rule 1 of the Civil Procedure Rules (2010) and Under Section 68 of the Land Registration Act, 2012.

The Application seeks Orders:

1. ***THAT this Application be certified as urgent.***
2. ***THAT pending the hearing and determination of this Application and suit, an Order of Inhibition do issue and be registered against title No. NTIMA/IGOKI/7352 inhibiting any further registrations against the title.***
3. ***THAT the Defendant by himself, his servants or agents be restrained from entering, remaining, trespassing, transferring, charging or in any manner dealing with land title No. NTIMA/IGOKI/7352 pending the hearing and determination of this suit.***
4. ***THAT the costs of this Application be provided for.***

2. The Application is supported by the Affidavit of SAMEERA PARPIA and has the following grounds:-

1. The Plaintiff was at all material times the registered proprietor of title No. NTIMA/IGOKI/3100 which the Defendant fraudulently subdivided into two portions and fraudulently registered one resultant parcel thereof being Title No. NTIMA/IGOKI/7352 to his name.

2. The said land title No. NTIMA/IGOKI/7352 therefore belongs to the Plaintiff and the suit herein seeks cancellation of the said Defendant's registration and reinstatement of the Plaintiff's registration to the said land parcel.

3. It is important that the orders herein sought be issued so as to preserve the property as any further dealings may render the final orders in the main suit nugatory.

3. The Plaintiff submits that he became registered Proprietor of Land Title Number NTIMA/IGOKI/3100 through transmission on 6.9.1999. He had ownership of the property until 2008 when the Defendant fraudulently Subdivided the property into two portions, to wit, Title Nos. NTIMA/IGOKI/7352 and 7353 and had himself registered as the Proprietor of title No NTIMA/IGOKI/7352.
4. The Plaintiff submits that he had never donated a Power of Attorney to one Peter Nduma Kamau who is alleged to have sold part of the suitland to the Defendant and that if such a Power of Attorney existed it would be fraudulent or forgery.
5. The Plaintiff claims in the year 2008 he lacked capacity to donate a Power of Attorney as he was suffering from Parkinson's disease which condition denied him mental capacity to manage his affairs. A Medical Report by Dr. Pramod Shah testifies that the Plaintiff has suffered from Parkinson's disease from the year 2003 and, therefore, any Power of Attorney claimed to have been made, executed and donated by the Plaintiff since the year 2003 can only be a forgery.

6. The Plaintiff submits that his Application satisfies the requirements for the grant of Orders of Inhibition and Injunction because:-

(I) Unless the Orders are granted the Defendant may alienate, sell or dispose of the suitland and thus render the suit nugatory (11) There are pertinent issues awaiting determination which he states are as follows:

(a) Whether the Plaintiff donated the alleged Power of Attorney to Peter Nduma Kamau.

(b) Whether the Subdivision of land Title Number NTIMA/IGOKI/3100 was authorized by the Plaintiff.

(c) Whether the Plaintiff sold to the Defendant the suit Land as claimed.

(d) Whether the Defendant holds a clean title to the suit land and/or whether the title he holds is a consequence of fraud and therefore void.

7. The Defendant opposes the Application and trashes the Medical Report proffered by the Plaintiff's guardians and says that the author of the report has only treated the Plaintiff from 2012 and not before. He says that there is no authentic report on the condition of the Plaintiff prior to the year 2012.
8. He submits that he is a bona fide purchaser for value who bought the suit land from the donee of the Power of Attorney by the Plaintiff.
9. The Defendant submits that that the suit land parcel No. NTIMA/IGOKI/7352

is in his possession and that he has exclusively developed it. He also says that the other Subdivision Parcel No. NTIMA/IGOKI/7353 is exclusively occupied and has been developed by one Joseph Kathurima whose family lives thereon. "He says that the guardians of the Plaintiff live in Nairobi and have not challenged possession and occupation of the suitland by the Defendant.

10. The Defendant submits that all Government Departments verified and approved the transaction between the Plaintiff's donee of the Power of Attorney and the Defendant, and therefore, the same could not be challenged six years after completion of the transaction.

11. I have carefully considered the averments and the submissions of the parties. Many of the issues they have raised such as the validity and integrity of the Power of Attorney donated to the person who transferred the suitland to the Defendant, the Integrity of the Medical Report proffered by the Plaintiff's guardians and if or not the Defendant is an innocent bona fide Purchaser for value can only be determined after the hearing of the main suit and not at this interlocutory stage.

12. I will not, at this interlocutory stage, make final findings on disputed facts. However, that the Defendant is in occupation of Land Parcel No. NTIMA/IGOKI/7352 has not been challenged and controverted by the guardians of the Plaintiff. Regarding if or not the family of one Joseph Kathurima has exclusively developed and exclusively occupies Land Parcel No. NTIMA/IGOKI/7353 is a matter that this Court will not delve into. It is not one of the issues being contested in this Application and in the main suit. I, therefore, find that injuncting a person in possession from accessing a property in which he is in possession would spawn disproportionate consequences at this interlocutory stage

13. In the Interests of justice, I find it necessary to preserve the suit land until the main suit is heard and determined.

14. In the Circumstances I issue the following Orders:

(1) Prayer 2 for an order of Inhibition is granted and I order that an order of Inhibition is issued and is to be registered against Title NO. NTIMA/IGOKI/7352 inhibiting any further registrations against the title pending hearing and determination of the suit.

(2) Prayer 3 is denied.

(3) Costs shall be in the cause.

It is so ordered.

Delivered in open Court at Meru this 30th Day of July, 2015 in the presence of:-

CC:

Daniel /Lilian

Parties not in Court.

P.M.NJOROGE

JUDGE