



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

ENVIRONMENT AND LAND CASE NO.261 OF 2013

BEATRICE MUKAMI KIRIMI.....1ST PLAINTIFF

LEWIS MAWIRA KIRIMI.....2ND PLAINTIFF

EMMACULATE KAIGONGI KIRIMI.....3RD PLAINTIFF

SILAS MUTUGI KIRIMI.....4TH PLAINTIFF

VERSUS

BENJAMIN KIRIMI NGAINE.....1ST DEFENDANT

FRANCIS KIRIMI NGARUNI.....2ND DEFENDANT

RULING

1. This ruling is in respect of two applications. One, filed by the plaintiffs, is dated 26.9.2013 and seeks orders:

1. ***THAT this application be certified urgent and be heard ex-parte in the first instance.***
2. ***THAT the Honourable Court be pleased to issue an Order of inhibition to be placed over parcel NO.NKUENE/NKUMARI/834 pending interpartes hearing of this application or further orders of Court.***
3. ***THAT the Honourable Court be pleased to issue an Order of inhibition to be placed over parcel NO.NKUENE/NKUMARI/834 pending the hearing and determination of this suit or further orders of the court.***
4. ***THAT the Honourable Court be pleased to issue an order of temporary injunction restraining the defendants, their assigns, representatives and/or anyone acting at the behest from evicting the plaintiffs and/or interfering with the plaintiffs' quiet possession and/or peaceful enjoyment of parcel No. NKUENE/NKUMARI/834 pending the hearing and determination of this suit or further orders of the court.***
5. ***THAT the Honourable Court be pleased to issue an order of temporary injunction restraining the defendants, their agents, assigns, representatives and/or anyone acting at their behest from evicting the plaintiffs and/or interfering with the plaintiffs' quiet possession and/or peaceful enjoyment of parcel No. NKUENE/NKUMARI/834 pending the hearing and determination of this suit or further orders of the court.***

6. ***THAT the honourable Court be pleased to issue any further orders in the interest of justice.***

7. ***THAT costs be borne by the defendants.***

2. It is supported by the Affidavits of Beatrice Mukami Kirimi, Lewis Mawira Kirimi, Emmaculate Kaigongi Kirimi and Silas Mutugi Kirimi and has the following grounds:

a) ***Parcel No. NKUENE/NKUMARI/834 (Hereinafter “the suit land”) is family/ancestral land whereat the plaintiffs have called home for ages.***

b) ***The suit land was held in the 1st defendant's name, who is husband to the 1st plaintiff and father to the rest of the plaintiffs.***

c) ***The 1st defendant held the suit land in trust for his own benefit and the plaintiffs' benefit.***

d) ***In breach of that trust, he stealthily colluded with the 2nd defendant and transferred the suit land to the latter without the plaintiffs' knowledge or consent as is required by law.***

e) ***The defendants have been threatening the plaintiffs with eviction, with the 1st plaintiff already evicted and the 2nd and 4th plaintiffs on the verge of eviction.***

f) ***If the defendants' threats are executed, the plaintiffs shall be rendered landless and destitute.***

g) ***This application is brought in the interest of justice and is meritorious.***

h) ***The defendants have also threatened to further alienate the suit land hence the urgent need to preserve the suit land.***

3. The second application filed by the defendants is dated 2.4.2014 and seeks orders that:

a) ***The court be pleased to review the order dated 26.9.2013 in as far as the inhibition order is concerned, lift the same to enable the applicant get his 2.84 acres out of land parcel NO.NKUENE/NKUMARI/834.***

b) ***The Court do make such further orders as may meet the ends of justice.***

c) ***Costs of this application be provided for.***

4. It is supported by the affidavit of Francis Kirimi Ngaruni, the 2nd defendant and has the following grounds:

i. ***The suit land above mentioned had been sub-divided into two new parcels prior to the filing of this suit.***

ii. ***The applicant is entitled to a portion measuring 2.84 acres and his parcel is NKUENE/NKUMARI/3167 which is already registered at the lands office.***

5. Exparte Interlocutory orders were granted to the plaintiffs in the application dated 26.9.2013 in terms of prayers 2 and 4 on 27.9.2013. The defendant is challenging the interim interlocutory order for inhibition.

6. The plaintiffs say that they sought interim injunctive orders and for inhibition over parcel No.Nkuene/Nkumari/834 to preserve the suit land pending the hearing and determination of this suit.

7. The plaintiffs say that 1st Plaintiff is the lawful wife of the 1st defendant and that the 2nd, 3rd and 4th plaintiffs are the children of the 1st Plaintiff and the 1st defendant. They say that the 1st defendant abandoned them for 19 years and left them in the family land only to resurface in 2009 and started creating havoc by stealthily dealing with and alienating the family land without consulting the plaintiffs.
8. The plaintiffs submit that if the interlocutory orders sought are not granted, the basic substance of the suit will change. They proffer that the order of inhibition is the only thing that is preventing the defendants from subdividing the suit land. They trash the 2nd defendant's claim that he bought the suit land to hold it in trust for the 1st defendant. They term that submission "nonsensical". They say that he is not an innocent purchaser for value in view of his secret dealings with the first defendant over the suit land.
9. The plaintiffs say that the suit land is family/ancestral land to which they attach great sentimental value which can not be compensated by way of damages. They request this court to be persuaded by the Judicial authority of *Martin Mugambi & Another versus Njeru Nyaga alias Ndururu Nyaga* [2013] eKLR.
10. The plaintiffs deny that they have been delaying the hearing of this suit. They have said that the case was slated for hearing on 6.5.2014 but the defendants did not turn up. As the defendants have never approached the plaintiffs, their claim that the plaintiffs had not attempted to proceed with the matter or to settle the same was baseless.
11. The plaintiffs say that they live on the suit land and have no alternative land. They submit that as it is clear that the defendants have stealthily and without consent of or consultation with the plaintiffs sought to alienate the suit land, they have demonstrated a justiciable discernible interest, and therefore, their application should be allowed.
12. The defendants say that the orders of injunction and inhibition are illegal as they are dated 26.9.2013, a day before the suit was filed. I dismiss this submission summarily. The orders were granted on 27.6.2013. The indication that the orders were issued on 26.9.2013 is a mere typing mistake.
13. The defendants say that they had attempted a settlement but this was not successful. They say that the plaintiffs had refused to file submissions as they were enjoying the orders, according to them "allegedly issued on 26.9.2013."
14. The 2nd defendant says that although he is currently registered as the owner of the whole of the suit land, he had only bought 2.484 acres being Parcel No. Nkuene/Kumari/3167. He says that parcel No. 3168 is 3.98 acres in size and that the plaintiffs can have it as he has no interest in it. He says he spent a lot of money in buying the land and that the 1st defendant is not able to refund it. He says that the order of Inhibition is restraining him from being registered as owner of his portion so that he can enjoy the fruits of his labour.
15. I have carefully examined the pleadings by the parties. I have also carefully examined their Submissions. I do find the authority proffered by the plaintiffs, that is the case of *Martin Mugambi & Another Versus Njeru Nyaga alias Ndururu Nyaga* (op.cit) veritably relevant to the circumstances of this case.
16. The plaintiffs are the children of the 1st plaintiff and the 2nd defendant. This fact has not been controverted. The plaintiffs' claim that the suit land is family/ancestral land has not been impeached or even challenged by the defendants. Also, the claim that the 1st defendant had abandoned the plaintiffs for 19 years, to only come and seek to alienate the suit after his return, has not been controverted.
17. I find it interesting that the 1st defendant had all the suit land registered in the name of the 2nd defendant. The intention of doing this can only be known after this suit is heard and determined. What if the order of interim inhibition is vacated, and the second defendant transfers the land to another party? I do find that it is necessary to confirm the order of inhibition issued on temporary basis on 27.9.2013.

I do not need to re-invent the wheel. The Court of Appeal, when dealing with interlocutory injunctions, in **Mbuthia Versus Jimba Credit Corporation, [1988] KLRI** opined as follows:

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

I will not make findings on disputed facts. But weighing the relative weights, I find that the plaintiffs' application dated 26th September 2013 has merit. I dismiss the defendants' application dated 2nd April, 2014.

Costs shall be in the cause.

Delivered in Open Court at Meru this 28th day of July 2015 in the presence of:

Cc.: Lilian

Muthomi holding brief for Miss E.G. for Defendants

P. M. NJOROGE

JUDGE