



REPUBLIC OF KENYA
HIGH COURT OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KAPSABET

LAND CASE NO. E 002 OF 2021

STANLEY TAPYUYUI MARU.....PLAINTIFF/APPLICANT

-VERSUS-

EMILY JEPTARUS MUCHAI.....1ST DEFENDANT/1ST RESPONDENT

BENJAMIN KIPROTICH TANUI.....2ND DEFENDANT/2ND RESPONDENT

RULING

1. The Applicant Stanley Taptoyoi Maru, has sought for injunctive orders vide his Notice of Motion Application dated 29th October, 2021. The orders sought in the said Notice of Motion are:-

a) Spent

b) Spent

c) THAT there be temporary orders of injunction restraining the Defendant/Respondent by herself, their servants and/or agents from trespassing, entering, ploughing, damaging, wasting, alienating or transferring or in any other way interfering with the Plaintiff's case, possession and ownership of part of that parcel known as Nandi/Kebulonik/344 measuring 2 acres pending the hearing and determination of the main suit herein.

2. The application is supported on grounds inter alia, that the Plaintiff claims purchaser's interest having purchased 1 acre on 23/6/1992 and another acre on 25/9/1993 from Samuel Kimagut Mutai (now deceased), and now the 1st Defendant/Respondent having obtained a Grant over the Estate of Samuel Kimagut Mutai, has threatened to evict the Plaintiff/Applicant.

3. Further the application is supported by the Supporting Affidavit of Stanley Taptoyoi Maru, the Applicant who deposes and exhibits therein, an application for consent and the consent to subdivide in respect of 1 acre. The Applicant further exhibits as annexure 3, an agreement for sale for purchase of the extra acre.

4. The Applicant filed a further Affidavit deponed on 6th January 2022 in response to the Replying Affidavit of Emily Jeptarus Mutai sworn on 11th November, 2021.

5. The Applicant in respond to the Replying Affidavit deposes that he initially bought 3.8 acres in which the Respondent has only acknowledged 1.8 acres, and gives a chronology of the events leading to the purchases.

6. The Respondent has opposed the Application and 1st Respondent has filed a Replying Affidavit.

7. In the said Replying Affidavit the 1st Respondent at paragraph 3 does not dispute that the Applicant purchased property from the deceased but disputes the acreage as 1.8 acres and not 2.0 acres.

8. Parties herein were directed to file and serve written submissions which they did, and now this ruling.

APPLICANT'S CASE: -

9. The Applicant submits that he had established a prima facie with probability of success and places reliance on the case of Giella -vs- Cassman Brown on the Principles of Grant of Injunction.

10. The Applicant further places reliance in the case of Robert Mugo was Karanja -vs- Ecobank (Kenya) Limited and another 2019 eKLR where the Court held **“circumstances for consideration before granting a temporary injunction under 40 rule 1 of the Civil Procedure Rules requires a proof that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party of the suit or wrongly sold in execution of a decree or that the Defendant threatens or intends to remove or dispose the property the Court is in such situation enjoined to a grant a temporary injunction to restrain such acts.”**

RESPONDENT’S CASE: -

11. The Respondents in their submissions submit that the Applicant has failed to present a prima facie case as he has not demonstrated how his interest in the suit property is being wasted or damaged.

12. The Respondent thus prays that the application be dismissed.

13. The law on Grant of an Interlocutory Injunction is well settled on the principles as set out in Giella is Cassman Brown and Mrao Limited and lately the Nguruman Limited decision.

14. In the suit herein, the Originating Summons the Applicant prays for Orders of extinguishing the Respondents’ title for 2 acres by virtue of adverse possession.

15. In the Application before Court as well as the responses, the Applicant is seeking 2 acres while the Respondent has conceded that the Applicant purchased 1.8 acres

16. It follows therefrom that the Applicant has a legitimate claim of purchase of the property and that the only issue in dispute is the acreage.

17. The Applicant is apprehensive that with the issuance of the Grant in favour of the 1st Respondent. The 1st Respondent could change the ownership of the suit property to his detriment.

18. At this point in an interlocutory injunction, the Court is only tasked with inquiring on the facts so as to establish a prima facie case without making a final determination thereof.

19. In the Nguruman Case, the Court of Appeal held, **“we reiterate that in considering whether or not a prima facie has been established, the Court does not hold a mini trial and must examine the case closely. All that the Court is to see is that on the face of it the person applying for an injunction has a right which has been threatened with violation. Position of the parties are to be proved in such a manner so as to give a final decision in discharging a prima facie case.”**

20. Having established occupation by way of purchase and the dispute been on the acreage purchased and occupied by the Applicant, the Applicant has demonstrated a prima facie case with a probability of success.

21. As the applicant is in occupation of the property, the balance of convenience equally fits in his favour.

22. According to the Notice Motion Application dated 29th October, 2021 is hereby allowed in terms of prayer 3 of the Application.

23. Costs in cause.

Orders accordingly.

DATED at KAPSABET this 14th day of February, 2022

HON. M. N. MWANYALE

JUDGE

Ruling delivered in the presence of;

Mr. Rotich for the Respondent

Dr. Chebii for the Plaintiff/Applicant