



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
ELC CIVIL CASE NO. 365 OF 2013

ROBERT KARANJA1ST PLAINTIFF/ APPLICANT
FLORA HEZEKIAH KARANJA..2ND PLAINTIFF/ APPLICANT
HANNAH KARANJA.....3RD PLAINTIFF/ APPLICANT
VERSUS
CHIEF LAND REGISTRAR .1ST DEFENDANT /RESPONDENT
MERCY WANJIRU KURIA ...2ND DEFENDANT /RESPONDENT
FRANCIS JOHN WANYANGE MWANGI.....3RD DEFENDANT /RESPONDENT

RULING

- 1.The Applicants/ plaintiffs filed a Notice of Motion dated 14th May 2013 seeking the following orders:-
- 1) spent
 - 2) spent
 - 3) **That this Honorable Court be pleased to issue an order of temporary injunction against the Defendant by themselves, their servants, and/or agents restraining them from interfering with the plaintiffs' title to the suit property or otherwise quiet enjoyment and possession of the parcel of land known as Naivasha/Maraigushu Block 2/1627 (hereafter referred to as the suit land) pending the hearing and determination of the suit.**
 - 4) **That costs of this application be provided for.**

2.The Application is premised on the grounds set out therein and is supported by an affidavit sworn by the 1st Applicant dated 14th May, 2013 on his own behalf and on behalf of the other plaintiffs .

3.He depones that the suit land initially belonged to their grandfather Kogo Hezekiah and upon his demise the deceased left his estate to his four sons; Peter Muigai Karanja, Peter Njenga Kogo, Rev. Wilfred Chege Kogo and Hezekiah Muniu Karanja. The four divided the estate among themselves and Hezekiah Muniu Karanja was allocated 4 acres (the suit land) and proceeded to register the same in his

name.

4. Hezekiah Muniu Karanja (hereafter referred to as the deceased) died on 23rd June, 2011. A While later, the title to the suit land disappeared necessitating the plaintiffs and their uncle Rev. Wilfred Chege Kogo to visit the Land Registrar Naivasha and register a caution.

5. Meanwhile, Mercy Wanjiru Kuria the first defendant herein, had moved to the Lands office with a succession letter from Nakuru High Court alleging that she was the administrator to the estate of the deceased and had been issued with a title deed in her name despite a caution having been registered against the title. she then sold the suit land to the 2nd defendant who in turn moved therein in December 2012 and ordered the tenants who had leased the suit land for farming to vacate the same.

6. The matter was reported to the Criminal Investigation Department and after conducting investigations, it emerged that the succession cause wherein the grant of letters of administration by the 2nd defendant had been obtained was for the estate of Julius Nduati Silus implying that the purported grant to Mercy Wanjiru Kuria was nonexistent and the documents fraudulent thus making the subsequent transfer to Francis John Wanyange to be laced with fraud and irregularities.

7. In April, 2013 the 3rd defendant brought surveyors to subdivide the suit land with the intention of selling the same to third parties and is now threatening to evict the tenants there from.

8. Leave was granted to the plaintiff to serve the 2nd defendant by way of substituted service after the court was informed by counsel for the plaintiff that the Criminal Investigation Department had tried to trace the 2nd defendant in vain. Despite advertisement in the Nation Newspaper, the 2nd defendant did not enter appearance and neither did the 1st respondent.

9. The 3rd defendant entered appearance but did not file any response to the application.

10. When the application came up for hearing, counsel for the plaintiff had filed written submissions although no such directions had been given by the court. He chose to fully rely on his submissions, which I have read and considered together with the authorities.

11. The issue that stands out for determination is whether on the facts and circumstances of this case, the Applicant is entitled to the orders of injunction sought at this interlocutory stage.

12. The principles upon which the court will grant an injunction are well settled and articulated in the decision of **Giella vs Cassman Brown & Co. Ltd (1973)** EA 358. The Applicants need to show that they have a *prima facie* case with probability of success; that they stand to suffer irreparable damage that cannot be compensated by an award in damages and if the court is in doubt, it will determine the application on a balance of convenience.

13. On the first limb, the applicants must show that they have a *prima facie* case with probability of success. In so doing, they annexed a copy of the title to the suit land in the name of Hezekiah Muniu Karanja (deceased), a copy of a caution dated 15th August 2011, Letters of administration granted to the 1st & 2nd plaintiffs, confirmation of grant, a notice by Mr Robert Karanja to all tenants dated 22nd January, 2012, a copy of the green card extract certified on 3rd July, 2013 and a copy of certificate of official search dated 17th December, 2012. They have also annexed copies of Documents allegedly relied by the 2nd Defendant which were used to obtain the title to the suit land .

14. At this stage all the applicants are required to demonstrate is not a case which must succeed but one which may succeed. With the facts and evidence placed before me which are uncontroverted, I am satisfied that a *prima facie* case with a probability of success has been established.

15. Will the applicant stand to suffer irreparable damage if the injunction is not granted? From the

material before me, the applicants have demonstrated that they are in possession of the suit land, their tenants are cultivating the said land and their farm produce is still in the ground. The 3rd defendant now wants to take possession of the suit land. I am convinced that unless the applicants are granted the orders sought the 3rd defendant may succeed in evicting the plaintiffs' tenants and disposing off the suit land. If this happens then the plaintiffs may not be compensated by an award of Damages.

16. Having found that the plaintiffs will suffer irreparable damage, I also find that the balance of convenience tilts in their favour. The order for an injunction if not granted will in effect see the eviction of the plaintiffs tenants from the suit land at an interlocutory stage without the court having sufficiently satisfied itself on the evidence and its credibility.

17. For the above reason, I find the Notice of Motion dated 14th May, 2013 has merit and allow prayers 3 and 4.

Dated, signed and delivered on this 4th day of April 2014.

L N WAITHAKA

JUDGE.

Present

Ms Ndeda holding brief for Mr Mongeri for the 2nd & 3rd Defendants

Ms Katambi for the 1st Defendant

Mr Kisilah for the plaintiff/Applicants

Emmanuel Maelo : Court Clerk

L N WAITHAKA

JUDGE