



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC NO. E6 OF 2020

CHARO CHENGO GOHU.....PLAINTIFF/APPLICANT

-VERSUS-

KITSAO CHARO GOHU.....1ST DEFENDANT/RESPONDENT

JUMANNE CHARO GOHU.....2ND DEFENDANT/RESPONDENT

UHURU CHARO GOHU.....3RD DEFENDANT/RESPONDENT

JOHN SHAURI CHARO.....4TH DEFENDANT/RESPONDENT

KAHINDI CHARO GOHU.....5TH DEFENDANT/RESPONDENT

ABDULLAHI GOHU CHARO.....6TH DEFENDANT/RESPONDENT

TSOFA CHARO GOHU.....7TH DEFENDANT/RESPONDENT

CHENGO CHARO GOHU.....8TH DEFENDANT/RESPONDENT

RULING

1. By the Notice of Motion dated 7th October, 2020 as filed herein on 12th October 2020, Charo Chengu Gohu (the Plaintiff) prays for an order of injunction to issue restraining the eight (8) Defendants

herein, their servants and/or agents from transferring, interfering with, disposing, alienating, charging and/or in any way dealing with the Plaintiff's parcel of land known as Title No. Kilifi/Kadzonzon/Madisimbani/1912.

2. The application which is supported by an affidavit sworn by the Plaintiff is premised on the grounds:

(i) That the Plaintiff is the registered proprietor and is in possession of the said parcel of land situated in Mariakani in Kilifi County.

(ii) That the Defendant with force and threats of violence unlawfully entered and trespassed upon the said parcel of land and commenced erecting semi-permanent structures thereon.

(iii) That the Defendants have also without any colour of right sold some portions of the said parcel of land to some third parties who have also began construction of permanent structures thereon; and

(iv) That unless restricted by a conservatory restraining order by this Court, the Defendants shall proceed and alienate the whole parcel of land to the detriment of the Plaintiff who stands to suffer incalculable loss and damage.

3. The application is unopposed. In a Replying Affidavit sworn on their behalf by the 2nd Defendant – Jumanne Charo Gohu, the eight Defendants aver that the application is a concoction of lies, innuendos, untruths and that the same is a total misrepresentation of the facts of this case.

4. The Defendants assert that they are the legal owners of the suit property and that the Plaintiff who is their cousin does not live on the suit land. The Defendants aver that they have lived on the subject land since time immemorial and that they have built their permanent homes on the land in which they also carryout farming activities.

5. The Defendant asserts that during the demarcation exercise, the Plaintiff went behind their back and procured a title in his name and that of his late father. The Defendants aver that the land was so registered in trust for themselves and that they did not envisage that the Plaintiff would at any time want to take advantage of the situation and evict them from the land as he is now trying to do.

6. The Defendants further assert that being the legal and/or beneficial owners of the land, they have authority to sell any portion of the land as it is their right.

7. I have carefully perused and considered the application by the Plaintiff and the response thereto by the Defendants. I have also perused and considered the written submissions and authorities placed before me by Ms. Nyambura Kamau, Learned Counsel for the Plaintiff. While the Defendants were granted an opportunity to file and serve submissions, I was unable to find any in the Court file.

8. The Plaintiff herein prays for an order of injunction to restrain the Defendants from transferring, alienating, interfering with and/or dealing in any manner whatsoever with the suit property. As Spry V.P. long stated in the locus classicus case of **Giella -vs- Cassman Brown & Company Limited (1973 EA 358)**:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a *prima facie* case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on a balance of convenience.”

9. As to what amounts to a *prima facie* case, the Court of Appeal had this to say in **Mrao Limited -vs- First American Bank Limited & 2 Others (2003) KLR 125**:

“So what is a *prima facie* case? I would say that in civil cases it is a case which on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

10. In the matter before me, the Plaintiff asserts that he is the registered proprietor of the suit property and accused the Defendants of unlawfully occupying the same and selling portions thereof to third parties. On their part, the Defendants do not deny being on the land and/or selling portions thereof. On the contrary, the Defendants assert that the suit land is their ancestral land which they have occupied since time immemorial. It is their case that being the legal and/or beneficial owners thereof, they have every right to be on the land and to sell any portion of the same as a matter of right.

11. However while the Defendants claim to be entitled to the suit property as the legal beneficiaries thereof and that the Plaintiff and his deceased father were registered as proprietors in trust for themselves, I was unable from the Replying Affidavit of the 2nd Defendant to discern any trust and/or the basis of their claim for beneficial interest on the land. Save for their claim that the Plaintiff is their cousin and that he went behind their back to cause the same to be registered in his name and that of his father, the Defendants have not shown any steps they have taken to annul the title issued in the name of the Plaintiff and that of the Plaintiff’s father.

12. In support of his case, the Plaintiff has annexed herein a copy of the Title Deed issued in the joint names of himself and that of his father Chengo Gohu Mwajuma on 8th August 2013. The Plaintiff has also annexed evidence to the effect that their registration arose from an adjudication process undertaken in the Kadzonzo/Madzimbani Adjudication Section on 15th April, 2011.

13. From annexure “CCG-2” of the Supporting Affidavit, it is apparent that the Plaintiff’s father subsequently passed away on 16th April, 2013 and that the Plaintiff was thereafter on 21st February, 2020 issued with a Limited Grant of Letters of Administration ad litem for the estate of his deceased father in Mariakani SPM’S Succession Cause No. 3 of 2020.

14. The registered proprietor of the suit property, the Plaintiff is entitled to absolute ownership and possession of the suit land. Given such registration, **Section 26(1) of the Land Registration Act** exhorts this Court to recognise his title in the following manner:

“The certificate of Title issued by the Registrar upon registration ... shall be taken by all Courts as *prima facie* evidence that the person named as proprietor of the land is the absolute and indefeasible owner thereof ... and the title of that proprietor shall not be subject to challenge except –

(a) On the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

15. From the material presented before me at this stage, it is evident that the Plaintiff is the proprietor of the suit property. There is no evidence placed before me to demonstrate that there was any impropriety in the acquisition of the title. As the Defendants admit that they are on the land and that they have been selling portions thereof without the authority of the Plaintiff, I am persuaded that unless the orders of injunction are granted, the Plaintiff stands to suffer grave and irreparable loss.

16. Accordingly I am satisfied that there is merit in the Motion dated 7th October, 2020. I allow the same in terms of Prayer No. 3 thereof with costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYERI VIA MICROSOFT TEAMS THIS 28TH DAY OF APRIL, 2022.

In the presence of:

No appearance for the Applicant

No appearance for the Respondents

Court assistant - Kendi

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J. O. Olola

JUDGE