



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

E.L.C. NO 71 B OF 2014

FAUSTINO NJERU NJOKAAPPLICANT/RESPONDENT

FRANCIS NJERU NYAGA.....APPLICANT

VERSUS

1. RUGANO NTHIGA.....1ST INTERSTED PARTY

2. STEPHEN IGOGO MATHERI.....2ND INTERESTED PARTY

3. SOSPETER KITHUMBU MURANGIRI.....3RD INTERESTED PARTY

4. KIMUNYE TEA FACTORY COMPANY LIMITED.....4TH INTERESTED PARTY

RULING

INTRODUCTION

By his notice of motion dated 7th January, 2014, Mr. Sospeter Kithumbu Murangiri (3rd Interested Party/Applicant) seeks the following orders from this court:

1. That Kimunye Tea Factory (4th Interested Party) be joined as a party to this case.
2. That the court issues a temporary injunction against Kimunye Tea Factory Company Limited by itself, servants or agents from taking possession, selling, preserving or charging the suit land to any financial institution.
3. That costs of this motion be provided for.

THE APPLICABLE LAW

The law governing the grant of temporary injunctions has been set out in the case of *Giella V Cassman Brown & Co Ltd (1973) E.A 358*. According to that case, an application for a temporary injunction must establish the following:

1. That he has a prima facie case which has a probability of success.
2. That if the injunction sought is not granted the applicant might suffer irreparable damage which damage is unlikely to be compensated by way of damages.
3. If the two conditions raised above raise doubt in the mind of the court, the court is required to decide the application on a balance of convenience.

THE FACTUAL BASIS OF THE MOTION

The application is strenuously opposed by Mr Faustino Njeru Njoka (the first applicant/Respondent) and Kimunye Tea Factory Company Limited (the 4th Interested party). In support of their opposition, they have stated that Mr Sospeter Kithumbu Murangiri has not made out a case to warrant the grant of a temporary injunction. It is the case of the applicants that the joining of the 4th interested party is not necessary for the fair and just determination of the issues in dispute. The 4th interested party has further stated that the suit land was transferred to him with all the requirements of the law having been satisfied.

Additionally, the 4th interested party has also opposed the grant of a temporary injunction against itself. According to the 4th interested party, it is not a necessary party in the judicial resolution of the main suit. Furthermore, the 4th interested party has also stated that he carried out a search which showed that the suit land was not encumbered by any person. Finally, the 4th interested party has stated that the applicant's application is actuated with malice and is an abuse of the process of the court.

ANALYSIS AND DETERMINATION:

I have considered carefully the submissions of the parties to this notice of motion. I have also perused the supporting affidavits of all the parties. There is massive documentation that the suit land has a long history of litigation. At some stage, the litigation was conducted in the name of "clans" in particular the 3rd interested party has brought this application in the name of his clan (Ikandi Clan).

Following a careful consideration of the affidavit evidence of the parties, it is clear that the 4th interested party should be made a party to these proceedings. The reason for this is that the allegations against him are of a fraudulent nature. Furthermore, the caution registered against the suit land was removed under unclear circumstances, according to the evidence of the 3rd interested party. There is also in place an indication that the applicant (Faustion Njeru Njoka) was to be registered as a trustee for the benefit of certain clans as directed by the Chief Land Registrar in his letter of 19th December, 2012 addressed to the District Land Registrar, Siakago.

In the light of the foregoing and having considered the entire affidavit evidence, I am of the considered view that the balance of convenience is titled in favour of the 3rd interested party (Mr. Sospeter Kithumbu Murangiri)).

I therefore grant the application of Mr. Sospeter Kithumbu Murangiri. He has made out a case for the grant of the following orders:

1. An order joining the 4th interested party in this suit.
2. A temporary injunction in terms of his notice of motion of 7th January, 2014 pending the hearing and determination of this suit.
3. The cost of this application will abide the outcome of the suit.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **28th** day of **October, 2014**

In the presence of

Mr Ngari for 3rd Interested Party

Mr Okwaro for the 4th Interested Party/Respondent

Court clerk, Mr Kirong

J.M. BWONWONGA

JUDGE