



REPUBLIC OF KENYA

High Court at Bungoma

Environmental & Land Case 44 of 2012

DEBORAH NASAMBU MUKHALISIPLAINTIFF

VERSUS

JOSEPH SILEKA MUKHALISI..... 1ST DEFENDANT

ALICE WAFULA NASIUMA 2ND DEFENDANT

PHILIP NAMASAKE JOHN 3RD DEFENDANT

RULING

The 1st defendant is the husband of the applicant while the 2nd and 3rd defendants are joint purchasers to portion of suit land E. Bukusu/S. Nalondo/1043.

The applicant's complaint is that she is not happy with the sale transaction undertaken by her husband the 1st defendant/respondent in favour of the 2nd and 3rd respondents, during oral submissions, she indicated that she presented her complaint before the relevant land control board which complaint was disregarded according to her because the 1st defendant is a member of this board. The sale took place in April but she learnt of the sale in May, her letter of complaint to the land Control Board is dated 10.7.2012. The consent to transfer the land to a Mr. Tony Opicho Wanyama was issued on 12th September 2012 which was after her complaint was lodged.

Secondly she avers that they are capable of paying school fees to their children from their farm harvests and therefore there was no need to sell the land for purposes of paying school fees as put by the 1st defendant.

Mr. Makali on behalf of the respondents submitted that the applicant cannot revoke a sale transaction through an application and that the registered owner of the suit land is not a party to the proceedings. The applicant has also not filed a suit challenging the Land Control Board decision granting the consent. He submitted further that the 1st defendant being the registered owner cannot be restrained from tilling or fencing his land and that the available option to the applicant is to put a restriction on the title. Finally he averred that the applicant has not met the threshold for granting injunctions.

Having looked at the pleadings and analyzed the submissions of the parties herein, what this court is required to determine is whether the applicant has met the threshold for granting injunctions as was laid

out in the renowned case of Giella Vs. Cassman Brown which are;

- (i). That an applicant must show a prima facie case with probability of success.
- (ii). The applicant might suffer irreparable loss.
- (iii). When the court is in doubt, it will decide the application on a balance of Convenience.

The applicant has not set out what loss she has suffered as a result of the defendants action or is likely to suffer.

At the time of hearing the application, the title to the suit land had already passed to one Tony Opicho Wanyama on 25th September 2012 and the said Tony is not a party to this proceedings. The applicant may be forced to amend her pleadings and before that is done it would be useless for this court to issue an injunction as against title Nalondo/1043 which has since been subdivided and one part given out.

The due process was followed by Tony in acquiring the suit land and the title cannot be thus challenged at the application stage. The applicant has admitted that they have harvested crops that were on this land. However as regards the other two remaining parcels of land e. Bukusu/S. Nalondo/503 and 482, the 1st respondent has indicated in paragraph 16 of his replying affidavit ***“that I have no intention whatsoever of selling land parcels NO. E. Bukusu/S. Nalondo/482 & 503 as alleged by the applicant herein.”*** Therefore the applicant has no cause for alarm.

I do therefore find the applicant’s motion as not meeting the threshold to warrant the issuance of a temporary injunction as prayed. I dismiss it but make no further orders as to costs.

RULING DATED, SIGNED, READ and DELIVERED in open court this 25th day of January 2013.

A. OMOLLO

JUDGE.