



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ELDORET**

**ELC CASE NO.24 OF 2021 (OS)**

**JOSEPH NJOROGE.....1<sup>ST</sup> PLAINTIFF**

**THOMAS TULO LANGAT.....2<sup>ND</sup> PLAINTIFF**

**MARGARET NJERI WAKABA.....3<sup>RD</sup> PLAINTIFF**

**DENNIS MWANGI WAMBUI.....4<sup>TH</sup> PLAINTIFF**

**(Suing on behalf of SOY UNITED SELF HELP GROUP)**

**=VERSUS=**

**SPRING WEST KENYA LIMITED.....DEFENDANT**

**RULING:**

1. This is a ruling in respect of a Notice of Motion dated 17<sup>th</sup> August 2021 in which the Plaintiffs/Applicants seek the following orders:-

a) Spent

b) Spent

c) A temporary injunction do issue restraining the Respondent by itself, its agents and or assigns or anybody acting through it from transferring, charging, wasting, alienating, selling, disposing or otherwise taking possession, dealing, entering into or otherwise interfering with the Applicants' quiet possession of all that parcel of land measuring 37.5 acres being part of L.R No. 8508 situated at Soy pending the hearing and determination of this suit.

d) The Land Registrar and or the Registrar of Titles do register a restriction upon the said land parcel namely land parcel measuring 37.5 acres being part of LR No. 8508 situated at Soy pending the hearing of this application interpartes and thereafter pending the hearing and determination of the suit herein.

2. The Applicants contend that they purchased 37.5 acres out of LR. No 8508 on 27<sup>th</sup> April 1983 (suit property). They took possession and have been in possession for over 36 years. They state that the suit property originally belonged to Soy Country club Limited. The suit property has since changed hands and is currently registered in the name of the Respondent.

3. The Applicants state that they asked Ms. Geomatics services a firm of surveyors to carry out survey work with a view to subdividing the suit property so that they could get individual titles but that the said survey firm did not succeed to carry out the survey work. The Applicants have since demanded to have titles from the Respondent in vain forcing them to file the present application.

4. The Applicants' application was opposed by the Respondent based on a replying affidavit sworn on 26<sup>th</sup> August, 2021. The Respondent contends that the Applicants' application is a non starter as they are seeking the suit property based on a non existent title. The Respondent states that the title was surrendered to the Government in exchange for subdivision and change of user. The Respondent therefore argues that the Court cannot give orders in vain.

5. The Respondent states that the suit property has been subdivided and new numbers issued and that it does not intend to do any illegal activities on the suit property as to call for grant of injunction. The Respondent further argues that the Applicants have not demonstrates that

they have a prima facie case to warrant issuance of an injunction.

6. The parties were directed to file written submissions. The Applicants filed their submissions dated 1<sup>st</sup> November, 2021. The Respondent filed its submissions dated 24<sup>th</sup> November, 2021. I have considered the Applicants' application as well as the opposition to the same by the Respondent. I have also considered the submissions by the parties.

7. There are two issues to be determined. The first is whether the Applicants have demonstrated that they have a prima facie case with probability of success. The second is whether the Applicants have demonstrated that there is need to order the land Registrar to register a restriction against the title.

8. The principles for grant of an injunction were well set out in the case of ***Giella -Vs- Cassman Brown & Co. Limited (1973) EA 358***. First an Applicant has to show that he has a prima facie case with probability of success. Second, an injunction will not be issued if the injury which the Applicant will suffer will adequately be compensated in damages. Third, if the Court is in doubt it will decide the application on a balance of convenience.

9. A prima facie case was described in the case of ***Mrao -Vs- First American Bank of Kenya Ltd & 2 others (2003) eKLR*** as follows:-

***“A prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” 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. Grant of a temporary injunction is predicated on order 40 Rule (1) (a) and (b) of the Civil Procedure Rules which states as follows:-

**1. Where in any suit it is proved by affidavit or otherwise:-**

**a) That any property in dispute in a suit is in a danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or**

**b) That the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit.**

11. I have looked at the materials presented to me by the parties herein. The Applicants are claiming the suit property based on a sale agreement executed on 27<sup>th</sup> April, 1983. This agreement is in respect of LR No 12186. The suit property herein is LR. No 8508. The Applicants have absolutely failed to indicate in what manner the Respondent has threatened them as to call for grant of an injunction. They merely state that they filed the present application because the Respondent has refused to give them titles. There is no indication whether the Respondent is threatening them with eviction or disposal of the suit property. This being the case, the Applicants have not demonstrated that they have a prima facie case which will warrant grant of an injunction.

12. The Respondent states that the title over which the Applicant claim part of the suit property is non existent as the title was surrendered and new numbers have been given. This being the case, I do not see what prima facie case the Applicants have over which they can claim part of the land by way of adverse possession.

13. The land occupied by the Applicants is capable of being valued and in case they succeed, they will always be compensated in damages. Even if the Court were to entertain any doubts, the balance of convenience tilts in favour of the Respondent who has title to the suit property and did not enter into any contract with the Applicants.

14. A restriction is ordered to prevent any fraud or improper dealing with a parcel of land. A court can order a restriction to be registered against title if it is convinced that there is a likelihood of improper dealings or fraud being perpetrated. In the instant case, the Applicants have not given any single evidence that the Respondent is about to carry out any improper dealings or fraud on the suit property. I therefore find that the Applicants' application is devoid of merit. The same is dismissed with costs to the Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 20TH DAY OF APRIL, 2022.**

**E. OBAGA**

**JUDGE**

In the virtual absence of parties who were aware of the date of delivery of ruling.

**E. OBAGA**

**JUDGE**

**20<sup>TH</sup> APRIL, 2022**