



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 725 of 2012

HELLEN WANJIRA MUNDUI.....PLAINTIFF/APPLICANT

-VERSUS-

EMBAKASI RANCHING COMPANY LIMITED.....1ST DEFENDANT/RESPONDENT

STANLEY MBURU KURIA.....2ND DEFENDANT/RESPONDENT

RULING

The Plaintiff filed her plaint dated 17th October 2012 simultaneously with a Notice of Motion application dated the same date.

The Notice of Motion application inter alia seeks an order of injunction restraining the Defendant/Respondents by themselves their agents, servants and all those claiming under them from evicting or in any way interfering with the Plaintiff/Applicants development on and/or peaceful enjoyment of plot NO.V5706 until the suit herein shall have been heard and finalized.

The application is supported by the annexed affidavit sworn by the plaintiff and further on the grounds that: -

(a)The Defendants/Respondents have threatened to stop the Plaintiff/applicant from carrying out developments on the said plot.

(b)Should this continue to happen the Plaintiff/Applicant shall suffer irreparable loss and damage because she has already delivered building materials on the site and the same is at the risk of being stolen.

(c)The Plaintiff/Applicant is the legally registered owner of the plot and so the interference by the Defendant/Respondent is unlawful.

The Plaintiff in her supporting affidavit states that she was registered as the owner of Plot No. V5706 at Embakasi Ranching Company Ltd on 1st December 2008 and issued with member certificate of Plot ownership No. 011421 in respect of the plot and that the plot was identified to her whereupon she was issued with a beacon certificate on 19th December 2008. The Plaintiff further states in September 2012 when she delivered building materials on site to commence development the Defendant with workers came and stopped her from continuing with her development and threatened to have the police arrest her. On his part the 2nd Defendant has filed a replying affidavit in opposition to the Plaintiff's application for injunction and further a Mr. Eustace Wamuria Mahinda who claims to have been working for a surveyor who was contracted by the 1st Defendant to carry out survey work on the 1st Defendant's land situated off

Komarock Road in Ruai has also sworn an affidavit in support of the 2nd Defendants averments.

It is the 2nd Defendant's case that he purchased land from the 1st Defendant in 1990 and plot NO. P2235 was shown and identified to him on the ground by a Mr. Mahinda who has sworn an affidavit to this effect. The 2nd Defendant claims to have been in possession of the suit plot through agents one of whom is Nathaniel Nganga Kamau who the 2nd Defendant states informed him of the intrusion onto his land by the 1st Defendant.

The 2nd Defendant states he visited the site in the company of police officers from Ruai and found the 1st Defendant's workmen and/or agents on site.

In the present case the court is faced with a situation where both the Plaintiff and the 2nd Defendant each claim ownership of the suit property. Each of the parties has tendered documents on the basis of which each stakes claim to the piece of land. The 1st Defendant from whom the Plaintiff and the 2nd Defendant claim to have purchased the plot and each shown this specific plot now the subject of the suit has not as yet clarified who between the two protagonists is the person entitled to this parcel land.

On the basis of the material and evidence placed before the court by plaintiff and the Defendant it is not possible at this stage to determine who between the two is legally entitled to ownership of the plot and therefore possession of this plot.

The submissions by the parties Advocates cannot shed any more light than the parties' affidavits as to who the authentic owner of the parcel of land in dispute is. As it is, each of the parties has a different number designating the plot and yet each of them states this is the plot each them was shown on the ground. It is noteworthy that none of the parties has produced any survey map to back the allocation and the identification of the plot and it puts to question how the plot was being identified and shown to the parties as it were on the ground.

The principles upon which an injunctive relief may be granted are now well settled as laid out in the case **GIELLA vs. CASSMAN BROWN** and I need not repeat them suffice to note that a party must firstly show that they have a prima facie case with a probability of success and secondly a party has to show or demonstrate that unless the injunction is granted they will suffer loss and damage that cannot be adequately compensated for by an award in damages. If in any case the court is in doubt, the court may resolve the issue by considering the balance of convenience having regard to the attendant circumstances.

In the present case having regard to the unsettled and/or unresolved issue as to who is actually entitled to ownership of the suit property which I find cannot be resolved at this interlocutory stage, I am not prepared to hold that the Plaintiff has established that she has made out a prima facie case with a probability of success against the 2nd Defendant. If the question of ownership was settled, I would have held a prima facie case with a probability of success had been established. In the same vain since it is uncertain whether the 2nd defendant is the true and proper owner of the suit property the order that would commend itself in the interest of justice to all the parties would be that the parties maintain the status quo such that no party effects any further development and/or purports to alienate and/or dispose of the property until the suit is heard and determined.

In the result I order that status quo be maintained on the terms outlined above and that the plaintiff do effect service of summons to enter appearance to facilitate the closure of pleadings and consequent hearing of the suit on priority basis once the pleadings are closed.

The costs of this application shall be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF MARCH 2013.

J. M. MUTUNGI

JUDGE

In the presence of:

..... for the Plaintiffs

..... for the 1st Defendant

..... for the 2nd Defendant