



REPUBLIC OF KENYA

High Court at Nakuru

Civil Suit 323 of 2011

MUKUHI KAROBIA.....PLAINTIFF/APPLICANT

VERSUS

THE LAND REGISTRAR, NAIVASHA.....DEFENDANT/RESPONDENT

THE ATTORNEY GENERAL.....DEFENDANT/RESPONDENT

RULING

By a plaint dated 7th November, 2011 the plaintiff brought the suit herein seeking revocation and/or cancellation of title deeds issued by the 1st defendant on or about 3rd June, 2010 in respect of land parcels LONGONOT/KIJABE BLOCK 3/1727 and LONGONOT/KIJABE BLOCK 3/598; and an order to compel the 1st defendant to issue title deeds as per order contained in the certificate of confirmation of grant issued in succession cause No.48 of 2009 (In the matter of the estate of Karobia Kamau (deceased)).

Simultaneously with the plaint the applicant (plaintiff) brought the motion dated 7th November, 2011 seeking a temporary injunction to restrain the respondents (defendants) from making entries in the green card, transferring or interfering with the suit properties pending the hearing and determination of the suit.

The application is premised on the grounds that the applicant is the legal administrator of the suit properties, that the respondents have without any colour of right or justification caused illegal and fraudulent transfer of the suit premises to Grace Wairimu Mwaura (deceased) and made further transfers to Grace Wairimu Mwaura (deceased) and Veronica Mukuhi Karobia; and that unless the orders sought are granted, the applicant and the other beneficiaries of the estate of the deceased will suffer irreparable injury.

In reply to the application the 1st respondent has deposed that the titles were issued to the members of Kenton Farmers Co-operative Society (in liquidation); that the title deeds were issued in accordance with instructions and directions given by the liquidator of the society; that his office was not notified of the death of the deceased; and that it only got to know of the the applicant's interest after registration.

Before me counsel for the applicant submitted that the registration of the properties was against the interest of the applicant and the other beneficiaries of the estate of the deceased; and that the applicant's efforts to have the unlawful registration cancelled was in vain.

Counsel for the respondent submitted that registration of the suit properties was effected following application by one of the beneficiaries thereof; that the respondents executed their statutory duty in accordance with the law; and that the applicant has not satisfied the conditions for granting an order of

temporary injunction. He further submitted that the application is defective in form; that an injunction cannot issue against public officers; and that the registered owner was not made a party to the suit.

Where in any suit it is proved by affidavit or otherwise that any property in dispute is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or that the defendant threatens 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, the court may by order grant a temporary injunction to restrain such act, or make such order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders. See **Order 40(1)** of the **Civil Procedure Rules**.

In exercising its jurisdiction to grant orders of temporary injunction the court applies the principles enunciated in the celebrated **Giella V. Cassman Brown Co. Ltd** (1973) E.A 358 to the effect that the applicant must demonstrate a *prima facie* case with a probability of success, that he is likely to suffer irreparable loss which cannot be compensated by an award of damages. But should the court be in doubt it must decide the application on a balance of convenience. However, in considering whether or not the applicant has a *prima facie* case there must be no definite determination of matters of fact or law. See **Mrao Limited V. First America Bank of Kenya Ltd** (2003) KLR 125.

It is common ground that the suit properties form part of the estate of Karobia Kamau (deceased). It is also common ground that the properties were transferred to one of the beneficiaries of the estate of the deceased, Grace Wairimu Mwaura, on or about 3rd June, 2010 (after the death of the deceased).

By dint of the provisions of Section 79 of the Law of Succession Act, chapter 160 Laws of Kenya, only the executor or administrator of the estate of a deceased has power to deal with the property of the deceased. Such property only vests in him as personal representative of the deceased; to hold on his behalf and on behalf of the other beneficiaries of the deceased.

In the instant application, there is no evidence that the persons to whom the estate of the deceased were transferred were the administrators of the estate of the deceased. The applicant, on the other hand, has annexed a grant of letters of administration issued to her on 11th May, 2009 and confirmed on 12th November, 2009. Without any evidence to the contrary, the applicant is *prima facie* the only person entitled to deal with the suit properties.

In essence, the applicant has established a *prima facie* case with a high probability of success.

The subject matter of the suit property been land, I am persuaded that the applicant might suffer irreparable injury unless the respondents are restrained from entertaining further dealings in respect of the suit property.

Although the application is admittedly defective in form, the defect does not go to the root of the application.

Pursuant to the powers conferred on the court under Order 40(1), for purpose of staying and preventing further alienation or disposition of the property, this court grants an order of temporary injunction restraining the 1st respondent from entertaining any further dealings by way of transfer, mortgage or otherwise pending the hearing and determination of this suit.

Those shall be the orders of the court.

Dated, signed and delivered on this 19th day of APRIL 2013.

**L N WAITHAKA
JUDGE**

