

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENTAL AND LAND DIVISION

ELC CIVIL SUIT NO. 304 OF 2012

DAVID JOSEPH GICHUHI GICHAMBA1ST PLAINTIFF

BEATRICE WANJIRU GICHAMBA.....2ND PLAINTIFF

VERSUS

JANE WACHEKE NJOROGE.....DEFENDANT

RULING

The Plaintiffs by a Notice of Motion application dated 29th May 2012 brought under Order 40 Rules 1, 2 and 9 of the Civil Procedure Rules and Section 3A of the civil procedure Act seek an order of injunction against the Defendant restraining her from being or remaining or entering upon land parcel No. Ruiru East/Block 1/1661 herein after referred to as “*the suit property.*”

The foundation of the Plaintiffs application is that they purchased the suit property in 2010 and are the registered proprietors having purchased the property from one Joseph Ndungu Kamau who held the suit property vide a title dated 8th May 2002. The Plaintiffs claim to have carried out the requisite due diligence both at the land office and physically on site and they confirmed the land to be registered in favour of Joseph Ndungu Kamau and that the same was in vacant possession whereupon they concluded the transaction. The Plaintiff aver that after concluding the sale transaction he on or about May 2011 commenced constructing a fence but on 20th May 2011 the Defendant jointly with others invaded the property and prevented the Plaintiff from carrying on any developments on the suit property. The Plaintiff further avers that subsequent investigations with the Lands Office revealed that he was the rightful owner of the suit property as per the certificate of search issued on 21st February 2012. The Land Registrar has registered a restriction on the title register of the suit property thus: “*Fraud suspected on Entry 8, Jane Waceke Njoroche has her original title.*” The Plaintiff by his plaint inter alia under prayer 4 seeks an order to discharge the restriction placed on the title deed. The Plaintiff has sworn an affidavit in support of the application and a supplementary affidavit which set out the chronology of events leading to the institution of this suit.

The Defendant for her part has sworn a replying affidavit dated 22nd June 2012 in opposition to the Plaintiffs application. The Defendant has deponed that the suit property was initially registered in the name of George Mbugua Gatiba who held a title deed dated 17/12/1992 as per the copy annexed as **JWNI** to the defendant’s replying affidavit. The Defendant further depones that the said George Mbugua Gatiba sold and transferred the suit property to the Defendant whereupon the Defendant was issued with a title deed dated 24/1/1999 as per the copy attached to the Defendant’s affidavit marked **JWN2**.

The Defendant avers that she took possession of the Land upon transfer to her and that she has held her original title issued to her to date and that she has never sold or transferred the land to anybody. She has deponed that she does not know Joseph Ndungu Kamau and she does not know how he came to be registered as the owner of the suit property. The Defendant contends she has never executed a transfer in his favour or in favour of any other person. The Defendant states her request to be furnished with a copy of the Green Card to establish how the said Joseph Ndung’u Kamau got to be registered as owner of the

suit property has not been met by the Land Registrar and in the premises it's apparent that fraud has been perpetrated as there was no way that a title could have been issued to the said Joseph Ndung'u Kamau without a transfer duly executed by the Defendant.

It is clear that in the above scenario that two titles exist on the suit property one held by the Plaintiffs pursuant to the purported sale by the said Joseph Ndung'u Kamau and the other by the Defendant pursuant to the sale by George Mbugua Gatiba which resulted in the title held by the Defendant dated 24/1/1999. It is not clear or apparent how Joseph Ndung'u Kamau acquired the title he transferred to the Plaintiffs as no abstract of title to the suit property has been availed. Indeed if the Defendant acquired her title in 1999 and she has not transferred the same to anybody it is necessary to establish how the said Joseph Ndung'u Kamau acquired the title in the suit property that he transferred to the Plaintiffs if the title the Defendant claims to hold on the same property was not transferred to him.

In the premises it is essential for the court to establish who holds the genuine title to the property and who is the rightful owner of the subject suit property. It is not possible at this stage to make a determination on that question as it will be necessary to establish through oral evidence at the trial who the true and genuine owner of the property is. In the interest of justice it is in the circumstances necessary to preserve the suit property until the question of ownership is settled and in the circumstances the order that commends itself to the Court is to require the parties to maintain the present status quo until the suit is heard and determined finally.

The court therefore makes an order directing the parties to maintain the present status quo where there will be no further developments on the suit property by either party and/or any disposition or alienation of the suit property by either party. The parties are directed to make compliance with Order 11 of the Civil Procedure Rules within the next 60 days to facilitate the hearing and determination of the suit on a priority bases. The costs of the present application will be in the cause.

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this 16TH day of JULY , 2013.

J. M. MUTUNGI

JUDGE