



REPUBLIC OF KENYA



**Mungai v National Land Commission & 6 others (Environment & Land
Case 923 of 2014) [2022] KEELC 2337 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2337 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 923 OF 2014**

**OA ANGOTE, J
JUNE 30, 2022**

BETWEEN

GEORGE MACHEHO MUNGAI APPLICANT

AND

NATIONAL LAND COMMISSION 1ST DEFENDANT

INTERNATIONAL PROPERTIES LIMITED 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

OCS PARKLANDS POLICE STATION 4TH DEFENDANT

AND

LETSHEGO KENYA LTD RESPONDENT

AND

NGARA ESTATE PROPERTY LIMITED 1ST DEFENDANT

KWANZA ESTATE LIMITED 2ND DEFENDANT

RULING

1. In the Amended Notice of Motion dated April 13, 2022, the Plaintiff has sought for the following orders;
 5. That this honourable Court be please to grant an interim injunction restraining the 5th and 6th Defendants/Respondents by themselves, their servants, agents and/or employees or any person claiming through them from in any way dealing with, disposing of, advertising for sale, selling or otherwise interfering with the property known as L. R. No. 209/20054 pending the hearing and determination of this suit.



6. The costs of this application be provided for.
2. The application is premised on the grounds that the suit involves the plot known as L. R. No. 209/1782/1 which was illegally and unlawfully combined with a plot previously known as L. R. No. 209/1782/2 to create the plot now known as L. R. No. 209/20054 (the suit property) registered in the name of the 6th Defendant and charged to the 5th Defendant.
3. According to the Plaintiff, L. R. No. 209/20054 is now charged in favour of the 5th Defendant; that the 5th Defendant has issued statutory notices of sale over L. R. No. 209/20054 and that he has a very good case with overwhelming chances of success.
4. In his supporting Affidavit, the Plaintiff deponed that his late father purchased L. R. No. 209/1782/1 from one Fatehali Nazarali Walji Pasani and Zarine Sadrudin Popat who were the administrators of the Estate of the late Khatijabai Nazarali Walji Pasani.
5. It is the Plaintiff's contention that the transfer was duly registered in his father's name on 28th December, 2005; that his father immediately took possession of the land; that he has never entered into any agreement to sell or mortgage the land and that it was not until 1st July, 2014 that his caretaker told him that the 4th Defendant had trespassed on the said land and demolished the structures thereon.
6. It was the deposition of the Plaintiff that he later learnt that the 5th Defendant was laying claim to the land having charged it and that the injunctive orders should issue to protect his right to own property.
7. The 5th Defendant filed a Replying Affidavit through its legal Officer and deponed that parcel of land known as L. R. No. 209/20054 (I.R. 129978) is currently charged in favour of the 5th Defendant vide a legal charge dated May 15, 2020 and a further charge of September 22, 2020 to secure Kshs 15,000,000.
8. It was deponed that the charge was executed by the registered proprietor of the said land, the 6th Defendant, to secure a loan advanced to the 7th Defendant and that the 5th and 6th Defendants defaulted and were issued with the statutory notices as per the provisions of the Land Act.
9. It was the deposition of the 5th Defendant's Legal Officer that the documents that were availed to them showed that the property was owned by the 2nd Defendant who then transferred the land to the 5th Defendant on 17th October, 2014.
10. In the Further Affidavit, the Plaintiff deponed that the ownership of L.R No. 209/1781/1 by his late father was confirmed by the 3rd Defendant vide an affidavit filed in these proceedings on 30th September, 2014 and that upon his investigations, he discovered that L. R. No. 209/20054 had been illegally and unlawfully created after combining properties known as L.R. No. 209/1782/1 and the adjacent property known as 209/1782/2.
11. It was the deposition of the Plaintiff that while he was waiting for the hearing of the suit, it came to his attention that the 5th Defendant had instructed Westminster Commercial Auctioneers to advertise the property known as L. R. No 209/20054 for sale.
12. The 1st, 2nd, 3rd, 4th, 6th and 7th Defendants did not respond to the application. The Plaintiff and the 5th Defendants filed submissions and authorities which I have considered.

Analysis and findings

13. This suit was instituted on 11th July, 2014 against the 1st and 4th Defendants when, according to the Plaintiff, the said Defendants invaded property known as L. R. No. 209/1782/1 and demolished the developments thereon.



14. According to the grant annexed on the Plaintiff's Affidavit, L. R. No. 209/1782/1 was registered in the name of the Plaintiff's father (deceased) on 28th December, 2005.
15. The Plaintiff has produced in evidence the transfer document that his late father entered into with the vendors of L. R. No. 209/1782/1 who were the initial allottees of the land together with the documents in support of the said transfer.
16. However, while awaiting the hearing and determination of the suit as against the 1st to the 4th Defendants, the Plaintiff learnt that L. R. No. 209/1782/1 which had been amalgamated with L. R. No. 209/20054 had been sold by the 2nd Defendant to the 6th Defendant who in turn charged the land to the 5th Defendant. It is the action of the 5th Defendant of issuing statutory notices to the 2nd Defendant that necessitated the Plaintiff to join the 5th – 7th Defendants in this suit and file the current application.
17. In the Amended Plaint, the Plaintiff has sought for a declaration that the merger of the property known as L. R. No. 209/1782/1 owned by his father (the deceased) and L. R. No. 209/1782/2 to create L. R. No. 209/20054 which was later on charged by the 5th Defendant was null and void.
18. The proprietary interest of the Plaintiff's father in land known as L. R. No. 209/1782/1 has not been disputed by the Defendants. Indeed, the 2nd Defendant, who purportedly had the two properties amalgamated to form L. R. No. 209/20054 has not filed a Replying Affidavit to explain the circumstances under which he had the two properties amalgamated, or how he came to own LR No. 209/1782/1 before having the two properties amalgamated.
19. The Plaintiff has annexed an Affidavit that was filed in these proceedings in which the Chief Land Registrar (the 3rd Defendant) confirmed that the Plaintiff's father owns L. R. No. 209/1782/1. The 3rd Defendant has not disputed the Plaintiff's deposition that the amalgamation of L. R. No. 209/1782/1 and L. R. No. 209/1782/2 was illegal and was done without the consent of the Plaintiff or his late father.
20. Considering that the Chief Land Registrar has deponed in her Affidavit sworn on 30th September, 2014 that the Plaintiff is the registered owner of L. R. No. 209/1782/1 and that the Plaintiff's ownership has not been interfered with by the 1st, 3rd and 4th Defendants, and in the absence of evidence by the 2nd, 5th, 6th and 7th Defendants on the circumstances that led to the amalgamation of L. R. No. 209/1782/1 and L. R. No. 209/1782/2 to create L. R. No. 209/20054 which was charged to the 5th Defendant, it is the finding of this Court that the Plaintiff has established a prima facie case with chances of success.
21. The 5th, Defendant has submitted that this suit is res judicata. What was in issue in the two previous suits which the 5th Defendant has alluded to were L. R. No. 209/1781 and L. R. No. 209/1782 whose leases had expired. However, what is in issue in the current suit is the purported merger of L. R. No. 209/1781/1 and 209/1782/2 to create L. R. No. 209/20054 which was subsequently sold to the 6th Defendant before charging the same to the 5th Defendant. Furthermore, neither the Plaintiff herein nor the 5th Defendant were parties in the said two suits. The issues in the three suits are therefore not directly and substantially the same, neither are the parties.
22. Considering that the court has found that the Plaintiff has a prima facie case with chances of success, in the event the bank sells the suit property to a third party, the Plaintiff is likely to suffer irreparable injury that cannot be compensated in damages.
23. Consequently, the Plaintiff's Amended Notice of Motion dated 13th April, 2022 is allowed as follows;



- a) An interim injunction be and is hereby issued restraining the 5th and 6th Defendants/ Respondents by themselves, their servants, agents and/or employees or any person claiming through them from in any way dealing with, disposing of, advertising for sale, selling or otherwise interfering with the property known as L. R. No. 209/20054 pending the hearing and determination of this suit.
- b) The 5th Respondent to pay the costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 30TH DAY OF JUNE, 2022.

O. A. ANGOTE

Judge

In the presence of;

Mr. Burungu for the Plaintiff

Mr. Kiplagat for 5th Defendant

Court Assistant – June/Tracy

