



REPUBLIC OF KENYA

High Court at Eldoret

Environmental & Land Case 662 of 2012

SOLOMON ODIRA OKELLO & ANOTHER.....PLAINTIFF

VS

ESTHER LABOSO.....DEFENDANT

(Application for injunction – principles to be applied in an application for injunction – 1st plaintiff registered owner of suit land – 2nd plaintiff an intended purchaser – alleged interference from the defendant – defendant claiming suit land to be part of the Estate of her deceased father – No evidence of this claim - No response filed to application for injunction – application allowed).

R U L I N G

The application before me is that dated 11th November 2010 filed by the plaintiffs. It is an application for injunction seeking to restrain the defendant from interfering with the land parcel UASIN GISHU/ILLULA/297 (the suit land). The application is based on the grounds inter alia that the plaintiff/applicant is the sole registered owner of the suit land and that the 1st defendant has sold the suit land to the 2nd plaintiff but that the defendant is interfering with the transfer process. The application is supported by the Affidavit of the applicant.

This being an application for injunction, I will stand guided by the principles laid out in the case of **Giella vs Cassman Brown (1973)EA358**. Principally, I have to be satisfied that the applicant has laid out a prima facie case with a probability of success; be alive to the principle that an injunction will not normally be granted unless the applicant stands to suffer irreparable loss; and finally if in doubt decide the matter on a balance of convenience.

To enable me determine whether the plaintiff has laid out a prima facie case, I will inevitably turn to the pleadings and assess the plaintiff's claim. Where there is a Defence or Reply to the application, such claim must be gauged against any competing claims raised by the respondent. The plaintiff avers that the 1st plaintiff is the registered owner of the suit land and that he is in the process of finalizing the transfer of the suit land to the 2nd plaintiff. It is the case of the 1st plaintiff that he purchased the suit land which is of five acres from one Lomekur Loitakono in the year 1985-1986. It has been pleaded that the defendant trespassed into the suit land sometimes in 2009 when the 1st plaintiff was in the process of transferring the suit land to the 2nd plaintiff who was purchasing the same from the 1st plaintiff. It is the plaintiffs' case that unless restrained from interfering with their possession, the defendant will cause them irreparable harm.

The supporting affidavit to the application has more or less repeated the averments in the pleadings. Annexed to the supporting affidavit are several documents including a copy of the title deed to the suit land indicating that the same is registered in the name of the 1st plaintiff and a copy of a Sale Agreement

between the 1st plaintiff and the 2nd plaintiff dated 6th December 2008.

The defendant has not filed any Replying Affidavit to the subject application. There is however on record a Defence. It is the Defendant's defence that she is the adopted daughter of Lomekur Laitakono who sold the suit land to the 1st plaintiff. She has declared in her defence that the suit land is registered in the name of Laitakono and that she is the sole beneficiary to his estate.

I have considered the application herein and I am satisfied that the plaintiffs have laid out a prima facie case with a probability of success. The 1st plaintiff has demonstrated that he is the registered owner of the suit land by annexing a copy of the title deed. The allegation by the defendant that the suit land is registered in the name of Laitakono is therefore misplaced. From the face of it, the suit land does not also form part of the Estate of Laitakono (assuming that he is deceased).

As owner, the 1st plaintiff is entitled to deal with the suit land as he so wishes without interference from the defendant who to me has not set up any competing claim and has not demonstrated, at least from the material presently on record, that she has any right to be on the suit land or to claim any part of the suit land. The 2nd plaintiff also has a right to purchase the suit land from the 1st plaintiff without interference from the defendant.

My preliminary assessment at this stage of the proceedings is that the plaintiffs have demonstrated a prima facie case with a probability of success. There is no doubt that they stand to suffer irreparable loss if their possession is interfered with by the defendant. In the circumstances, I allow the application and issue the following orders :

1. That pending the hearing and determination of this suit an interlocutory injunction do issue restraining the defendant or her servants/agents/assigns from entering upon, trespassing upon, ploughing, grazing livestock, cutting down trees, harvesting stones, leasing out, or in any other way interfering with the suit land UASIN GISHU/ILLULA/297.
2. The costs of this application be borne by the defendant.

DATED AND DELIVERED AT ELDORET THIS 20TH DAY OF DECEMBER 2012.

JUSTICE MUNYAO SILA.

ENVIRONMENT AND LAND COURT AT ELDORET.

Delivered in the presence of :-

Mr. Arap Mitei holding brief for Mr. Kitiwa of Kitiwa & Co Advocates for the Plaintiff.

No Appearance for M/s Terer & Co Advocates for the defendant.