



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CIVIL CASE NO. 161 OF 2009

EVA MUKHWANA JOMO..... PLAINTIFF/APPLICANT

V E R S U S

KHAVAKALI MAINA.....1ST DEFENDANT/RESPONDENT

DISTRICT LAND REGISTRAR2ND DEFENDANT/RESPONDENT

ATTORNEY GENERAL3RD DEFENDANT/RESPONDENT

R U L I N G

- 1.** The Application before me portends no difficulty; the Plaintiff/Applicant seeks an interlocutory injunction to restrain the Respondents from entering into, ploughing, cultivating, charging, and/or alienating the title for land parcel number **North Kabras/Kivaywa/1507** pending the hearing and determination of the suit.
- 2.** I have read the supporting Affidavit sworn on 4.11.2009 and the Replying Affidavit sworn on 25.11.2009 by the 1st Respondent. It is not denied that the 1st Respondent is presently registered the proprietor of title no. 1507 aforesaid. However, in the Plaint, the said title is faulted by the Applicant as having been obtained by fraudulent means.
- 3.** Of interest is the averment at paragraph 14 of the Plaint that on 8.3.2009 the 1st Respondent evicted the Applicant from the suit land and in answer, at paragraph 9 of her Replying Affidavit, the 1st Respondent deponed that the Applicant resides at Matete Market and not on the suit land. I believe her because that pertinent issue has not been controverted at all and so in fact the Applicant is not presently on the suit land.

4. At this stage and with that background in mind, has the Applicant met the principles for grant of an interlocutory injunction as were set out in Giella vs Cassman Brown (1973) E.A.358.?
5. I have taken into account the fact that whereas the 1st Respondent has exhibited a Sale Agreement dated 18.10.2002 and an extract of title showing that she was registered as proprietor of the suit land on 30.1.2009, the Applicant has exhibited a title deed issued on 24.10.2008 showing that she was registered over the parcel of land but there is no record that she was in fact ever properly recorded as such.
6. What is not in issue however is that one Jomo Juma Lusweti was initially registered as proprietor on 23.1.2009 and on 22.7.2008, the Applicant registered a caution over the title but it was removed on 2.9.2008 and on 30.1.2009, the 1st Respondent was registered as proprietor upon alleged sale of the land by the said Jomo Juma Lusweti.
7. Is there prima facie evidence of fraud as alleged? I see none. The Applicant has argued that Jomo Lusweti was her husband and that because he suffered from epileptic attacks, he agreed to transfer the land to her but in early 2008, the title to the land was lost and that she later obtained consent to transfer. Neither the Application for consent is exhibited nor is the alleged consent placed on record. The title deed issued on 24.10.2008 led to her arrest for obtaining registration by false pretence and so her own title is suspect. It is instructive that although Jomo Lusweti is alive, there is no complaint by him that he never sold the land to the 1st Respondent and there is no evidence that he is so mentally ill that he cannot act for himself. The Applicant may be his wife but i see no order appointing her as guardian ad litem.
8. From all the above facts, I am not at all convinced that the Applicant is entitled to any orders as sought and i will instead dismiss her Application dated 4.11.2009 with costs.
9. Orders accordingly.

Delivered, dated and signed at Kakamega this 17th day of March, 2011

ISAAC LENAOLA

J U D G E