



Alfred Kariuki Kihu v Stanley Charles Muchiri & another [2011] KEHC 203 (KLR)

ALFRED KARIUKI KIHU v STANLEY CHARLES MUCHIRI & Another [2011] eKLR

Neutral citation: [2011] KEHC 203 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND CASE 357 OF 2011
MK KOOME, J
NOVEMBER 14, 2011

BETWEEN

ALFRED KARIUKI KIHU PLAINTIFF

AND

STANLEY CHARLES MUCHIRI 1ST DEFENDANT

EMBAKASI CHARLES MICHIRI 2ND DEFENDANT

RULING

1. The plaintiff's notice of motion dated 19th July 2011 seeks for interim orders of injunction to restrain the defendants from dealing with plots nos L75[C886] and L76[C891] [hereinafter called suit premises] pending the hearing and determination of the suit.
2. The application is based on the grounds that through an agreement of sale, entered between the applicant and one Alice Wanjiku Ndirangu on 19th December, 1990, the applicant purchased a share in the 2nd defendant's company. The transfer of shares was duly stamped and it transferred to the applicant an interest in the suit premises. The applicant thus became a share holder and the plots were duly allotted to him. In October 1991 he was issued with a share certificate by the 2nd defendant which was proof of ownership.
3. The plaintiff complains that about 11th July 2011, the 1st defendant trespassed into the suit premises and started developing it while claiming ownership. The matter was reported to the 2nd defendant and also the police station. According to the applicant, unless an order of injunction is issued, he will suffer irreparable loss which cannot be compensated for the damages.
4. On the part of the 1st respondent, the application was opposed. firstly, counsel for the 1st respondent, submitted that the dispute herein should have been referred to the company that issued the subject



plots. The 1st respondent was issued with plot numbers V 227 and V 228 and not the plots that the applicant is complaining about. Although the plaintiff claims to have purchased the plots from Alice Wanjiku, the so called Sale Agreement does not indicate the plot numbers. Even the share certificate does not indicate the plot numbers.

5. The 1st defendant has been in possession of his plots from 1999. This is a matter that cannot be determined without the court adducing evidence from the 2nd defendant and a surveyor who can identify the portions of land referred to by the plaintiff as those plots are were different from the plaintiff's plots.
6. This application seeks for interim order of injunction, the principles to guide the court on whether or not to grant an interim order of injunction are well known. The plaintiff has to establish a prima facie case with a probability of success. Secondly the plaintiff has to establish that he will suffer irreparable harm which cannot be compensated for in damages, and if in doubt, the court is supposed to determine the matter on a balance of probabilities.
7. In the case of *Mrao Ltd v First American Bank Of Kenya Ltd & 2 Others* [2003] KLR 125 the court of appeal explained what constitutes a prima facie case in the following terms:

“A prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
8. Applying the above principles to the present case, it is not clear to me what plots constitutes the suit premises and who is the owner of those plots. The documents adduced in evidence to support the plaintiff's case do not prove that the plaintiff is the registered owner of the suit plots. More importantly, there is no evidence to show that the 1st defendant has trespassed and started construction on the plaintiff's plots. There is no survey map or report to identify the plaintiff's plots, granted that the plots have no formal titles.
9. On the other hand the 1st defendant has denied having trespassed on the plaintiff's suit land and claims that he took possession of his plots in 1999 and they bear different plot numbers.
10. On the face of it, there is no way this court can establish the location of the suit premises visa vis the 1st defendant's claim that he is occupying different plots. The court cannot grant orders in vain.
11. For the aforesaid reasons I direct this matter should proceed to full hearing. Parties should comply with the provisions of the Civil Procedure Rules and set the matter down for hearing. The application dated 19th July 2011 is disallowed but costs shall be in the cause.

RULING READ AND SIGNED ON THE 14TH DAY OF NOVEMBER, 2011.

M. K. KOOME

JUDGE

