



REPUBLIC OF KENYA



KENYA LAW
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**Kareiya v Pj Dave Flowers LTD & 10 others (Environment & Land Case
55 of 2018) [2022] KEELC 14908 (KLR) (17 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14908 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 55 OF 2018
MN GICHERU, J
NOVEMBER 17, 2022**

BETWEEN

JOSEPH KASYO KAREIYA PLAINTIFF

AND

PJ DAVE FLOWERS LTD 1ST RESPONDENT

CRETUM PROPERTIES LIMITED 2ND RESPONDENT

LAND REGISTRAR KAJIADO 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

JACKSON LAIRUMPE 5TH RESPONDENT

BRIGHTSON PROPERTIES LIMITED 6TH RESPONDENT

WINOMNAH ENTERPRISES 7TH RESPONDENT

DAVID SAMOIRE SHANKA 8TH RESPONDENT

NOAH KIKARDI NGOTIEK 9TH RESPONDENT

JOSEPH SIPOI SAOINA 10TH RESPONDENT

MICHAEL N. SAOINA 11TH RESPONDENT

RULING

1. This ruling is on the notice of motion dated October 25, 2021. It is by the plaintiff and seeks the following main order.



- i. The second Defendant be restrained together with its agents, servants and representatives from disposing, alienating, transferring, interfering or in any way selling land parcels numbers Kajiado/Kaputiei-North/15409, 15410, 16872, 17279 and 17280.
 - ii. The other prayers have either been allowed or overtaken by events.
2. The motion which is under Order 1 Rules 9 and 10, Order 8, Rules 3, 4 and 5, Order 40, Rules 1 and 2, Order 51, Rule 1, *Civil Procedure Rules* and Sections 1A, 1B, 3, 3A, 63 (e) and 100 of the *Civil Procedure Act*, Sections 3, 7(a) and 19 of the *Environment and Land Court Act* and enabling provisions of law is supported by an affidavit sworn by the applicant dated 25/10/2021.

The gist of the application is that the Applicant was the original owner of LR Kajiado/Kaputiei-North/816 which measured approximately 285 acres. It is ancestral land which was excised from Embolio Group Ranch.

The plaintiff first subdivided the original land as follows.

- i. LR Kajiado/Kaputiei-North/1759.
- ii. LR Kajiado/Kaputiei-North/1760.

Secondly, he subdivided LR 1759 into six (6) parcels namely, 2308, 2309, 2310, 2311, 2312 and 2313.

Thirdly, the Plaintiff sold Parcel No. 2309 to three brothers who are Noah Ng'otiek, Joseph Ng'otiek and William Ng'otiek. He has never sold LR 2308 or dealt with it in any other way.

In the year 2017, the Plaintiff discovered strange activities on LR 2308. Despite that he did not know them, he found strange people who were on the land. A search that he carried out revealed that the said parcel had been subdivided into five parcels which are Kajiado/Kaputiei –North/15409, 15410, 16872, 17279 and 17280.

The five parcels have subsequently been subdivided fraudulently to several people and transferred. The transferees include the first and second Defendants and other people and persons who are not yet parties.

At the time of filing the suit, the Plaintiff mistakenly omitted some people who are necessary parties.

The second Defendant consolidated LR 15410 with LR 1760, 2312, 15004, 15546, 15547, 15548, 19299, 19315, 122206, 2038 and 1244. It then subdivided the consolidated parcel into 1300 plots running from LR 8700 to 88190 for the purposes of developing and selling them as residential plots. The plots were later charged with Gulf African Bank.

The bank is now on the verge of selling 436 of the 1300 plots because the second Defendant has defaulted in servicing its facility with the bank. If the sale takes place, the substratum of the suit shall be defeated as the plots will pass to third parties who will be innocent purchasers for value. It is therefore prudent that the court stops the sale.

Annexed to the affidavit are seven (7) annexures which include a notice in a newspaper dated October 18, 2021 which says some plots running from numbers Kajiado/Kaputiei-North/87241-87799 would be sold on 2/11/2021 at 11.00 am on the 5th Floor Western Heights, Karura Road, Westlands Nairobi.

3. The application is unopposed because none of the Respondents has filed any replying affidavit or grounds of opposition.
4. I have carefully considered the application dated 25/10/2021 in its entirety including the affidavit and the annexures.



I find that prayer 3 of the chambers summons has already been overtaken by events considering that the sale was to take place on October 18, 2021 which is more than a year ago.

Prayer 5 was allowed on 18/5/2022.

In conclusion, the motion is allowed as per above but prayer 3 is dismissed. Costs in the cause.

Suit to be fixed for hearing within 3 months.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 17TH DAY OF NOVEMBER, 2022.

M.N. GICHERU

JUDGE

