



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 377 of 2005

MARGARET NYANDIA NGUGI.....1ST

PLAINTIFF

VERSUS

MUSA MUIRURI KARIUKI1ST

DEFENDANT

PHILIP NJOROGE NGUGI.....2ND

DEFENDANT

INDUSTRIAL & COMMERCIAL.....3RD

DEFENDANT

DEVELOPMENT CORPORATION.....4TH

DEFENDANT

RULING

The plaintiff by way of this Chamber Summons dated 29th March 2005 and expressed to be brought under Order XXXIX Rule 1 and 3 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeks orders that an injunction do issue restraining the 3rd defendant by themselves, their agents or servants or employees or otherwise howsoever from alienating, seeking, disposing by public Auction transferring the parcel of land known as LR NO. MUGUGA/MUGUGA/1443 or evicting or in any other way interfering with the plaintiffs quiet possession or use of the said parcel of land LR NO. MUGUGA/MUGUGA/1443 until the hearing and determination of this suit and that the costs of this application be borne by the defendants.

The application is based on the grounds as contained on the body of the Chamber Summons dated 29th March 2005. The application is also supported by an affidavit sworn by Margaret Nyandia Ngugi on 29th March 2005 in which she avers that her father NGUGI GATHU died on or about 1974, leaving one property known as LR NO. MUGUGA/MUGUGA/224. He died intestate. A succession cause was filed at Kiambu Law Courts being Succession Cause No. 28 of 1998. That the estate was distributed as follows:

1. MONICAH NJOKI NGUGI 3.3 acres
2. MARGARET NYANDIA NGUGI 2.2 acres

3. NGENDO NGUGI 2.7 acres
4. SIMON GICHUHI NJOROGE 0.7 acres

The grant was confirmed on 23rd July 1992 (MNN I).

The estate was distributed and LR NO. MUGUGA/MUGUGA/224 was subdivided into LR NO. MUGUGA/MUGUGA/1205, 1206, 1207 and 1208.

The applicant was given LR NO. MUGUGA/MUGUGA/1207 and a title deed was issued to her (MNN 2).

That the title deed was collected from Kiambu Land Registry by Phillip Njoroge an administrator of the estate and released by an official of the registry and an examination of the same it revealed that the title bore the names of MUSA MUIRURI KARIUKI (MNN 3); that she is illiterate and wholly depended on the information and advise of the said administrator Philip Njoroge Ngugi who informed her that the said title bore her names and should be kept in safe custody; that the 1st defendant colluded with Philip Njoroge Ngugi, the 2nd defendant herein, an administrator of the estate of Ngugi Gathu with the intention of depriving her of her beneficial interest on the said land known as LR NO. MUGUGA/MUGUGA/1207 measuring 0.89 Ha. And more particularly:

(a) That the 1st and 2nd defendants fraudulently obtained a transfer form drawn in the name of the 1st defendant's favour without knowledge or consent of the plaintiff.

(b) That the 1st and 2nd defendants fraudulently prepared and presented an application for consent to transfer to the Kikuyu Land Control Board. A glance at paragraph

1. (a) Of the Application for consent of Land Control Board

Present registered holder of interest full names show MARGARET NYANDIA NGUGI.

2. (b) proposed purchaser transferee – MUSA MUIRURI KARIUKI

3 Nature of transaction ABSOLUTE TRANSFER

4 Description of Land LR. NO. MUGUGA/MUGUGA/1207.

5 (a) Purchase price of Sale – GIFT.

(c) That the 1st and 2nd defendants fraudulently and with intention to deprive the plaintiff obtained consent from Kikuyu Land Control Board well knowing that the plaintiff had no knowledge of the said transaction and had not endorsed her consent or approval.

(d) That the 1st and 2nd defendants fraudulently caused a transfer to be registered in the 2nd defendant's favour at the Kikuyu Land Registry without the consent of the plaintiff and with the intention of defrauding the plaintiff.

(e) That the 1st and 2nd defendants fraudulently obtained and/or caused issuance of a title deed for the plaintiff's parcel of land known as LR NO. MUGUGA/MUGUGA/1207 and later fraudulently caused an entry to be made to the effect that the land had been subdivided into LR. NO. MUGUGA/MUGUGA/1443 and 1444.

That the 1st defendant is a stranger in so far as she has never agreed to sell or sold to the 1st defendant the land parcel known as LR NO. MUGUGA/MUGUGA/1207 and/or executed a transfer in his favour. That

since collecting the title deed from Kikuyu Land Registry. She has never appended her thumbprint on any document relating to the use or transfer of her parcel of land.

That on or about January 2005. She was served with a letter by the 2nd defendant indicating that the land parcel LR NO. MUGUGA/MUGUGA/1443 had been charged to secure a loan to Geoffrey Maina Erastus t/a Hoist Enterprises (MNN 4). That her parcel of land known as LR NO. MUGUGA/MUGUGA/1207 has never been subdivided by a qualified surveyor and any such entry in the Land Register was false and misleading (MNN 5) and misleading (MNN 5). That the said Geoffrey Maina Erastus is a stranger and that I did not consent to the land being charged.

That the 3rd defendant was negligent and did not exercise due care and attention when charging the said land parcel LR NO. MUGUGA/MUGUGA/1443 and as a result she has suffered loss and damage as her land stands to be sold by public auction to secure payment of Shs.1,315,262.10 which amount she has never borrowed and more particularly the 3rd defendant.

- (a) Failed to enter and examine the state and condition of LR MUGUGA/MUGUGA/1443
- (b) Failed to act in good faith with regard to the interest of persons occupying the land.
- (c) Failed to conduct a valuation of the parcel LR NO. MUGUGA/MUGUGA/1443
- (d) Failed to investigate the title documents presented on registration of the charge.

That she inquired from the 3rd defendant the circumstances leading to the registration of the charge and the 3rd defendant has neglected and or failed to respond to her queries. The hearing date was taken by consent but the respondent did not appear and therefore the application proceeded a ex parte.

This application seeks injunctive orders to restrain the 3rd defendant by themselves, their agents, servants or employees or otherwise howsoever, from alienating, selling the suit land or evicting or in any other way interfering with the plaintiff's quiet possession of the suit land until the hearing and determination of the suit.

The Court of Appeal for East Africa laid down in the case of GIELLA VS CASSMAN BROWN & CO. LTD & ANOTHER [1973] EA 358 as follows:- First the applicant must show a prima facie case with a probability of success at the trial but if the court is in doubt, it should decide the application on a balance of convenience. Secondly, normally an interlocutory injunction will not be granted unless the applicant would suffer an injury which cannot adequately be compensated in damages.

The applicant had acquired title for LR NO. MUGUGA/MUGUGA/1207 through succession as a result of the subdivision of LR NO. MUGUGA/MUGUGA/224 which belonged to her late father who died in 1974. She has been in occupation since that time. Her said land LR NO. MUGUGA/MUGUGA/1207 was fraudulently transferred to MUSA MUIRURI KARIUKI.

In his application to Kikuyu Land Control Board for consent the said MUSA MUIRURI KARIUKI had indicated that the plaintiffs land was given to him as a gift. The said MUSA MUIRURI KARIUKI is not related to the applicant. Subsequently there was subdivision which resulted into LR MUGUGA/MUGUGA/1443 and 1444.

The applicant has lived on the suit land since 1974 continuously and there were no physical subdivisions carried out on the ground. The applicant has satisfied the conditions applicable in granting interlocutory injunction and I therefore allow the application in terms of Prayer 1 of the Chamber Summons dated 29th March 2005. As regards Prayer 2 I order costs be costs in the cause.

Dated and delivered at Nairobi this 12th day of September, 2006.

J.L.A. OSIEMO

JUDGE