



**Kariuki v Waweru & another (Environment & Land Case E031 of 2022)
[2022] KEELC 15463 (KLR) (19 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15463 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E031 OF 2022
MN GICHERU, J
DECEMBER 19, 2022**

BETWEEN

JOHN NGATA KARIUKI PLAINTIFF

AND

JOHANA WANJAU WAWERU 1ST DEFENDANT

JAMES MURIITHI MUCHIRI 2ND DEFENDANT

RULING

1. This ruling is on the notice of motion dated April 4, 2022. It is brought by the plaintiff under sections 1A, 1B and 3A of the [Civil Procedure Act](#), order 40 rules 1 and 2, order 51, rule 1 [Civil Procedure Rules](#) and all other enabling provisions of law.

The motion seeks one main prayer of a temporary injunction against the defendants by themselves, their agents and or servants to be restrained from selling, transferring, alienating, evicting or otherwise interfering with the plaintiff's right in any way on land parcel No Kajiado/Ntashart/2801 now subdivided into two portions Kajiado/Ntashart/22623 and 22624 or any part thereof until the hearing and determination of the main suit.

2. The application is supported by an affidavit sworn by the applicant, six grounds and four annexures. The gist of the above material is that the plaintiff is the registered owner of the suit land which he purchased from Josiah Ole Saunyi on September 15, 1998. He has never sold the land to anybody. He still holds the original title deed issued to him on September 15, 1998 .

Recently, he came to find out that the first defendant fraudulently caused the land to be transferred to himself. Later on, the first defendant transferred the land to the second defendant who caused it to be subdivided into two parcels namely Kajiado/Ntashart/22623 and 22624. This fraud was discovered in March, 2022.



The plaintiff reported the matter to the police and the second defendant was arrested. He showed the police the copies of title deeds for parcels numbers 22623 and 22624.

3. The annexures attached to supporting affidavit include the following.
 - i. Copy of title deed dated September 15, 1998 in the plaintiff's name.
 - ii. Copy of register for LR 2801 with nine (9) entries including the fraudulent ones between the two defendants.
 - iii. Copies of title deeds for LR 22624 and 22623 in the name of the second defendant and dated August 27, 2021.
4. The application is opposed by the first defendant Johana Wanjau Waweru who has sworn a replying affidavit dated June 23, 2022 in which he denies ever owning the suit land or transferring it to the second defendant. He says that he has no interest in the suit property and both the plaintiff and the second defendant are unknown to him.
5. The second defendant James Muriithi Muchuri has also opposed the plaintiff's application by filing a replying affidavit dated April 22, 2022. Annexed to the affidavit are several annexures which include;
 - i. Copy of title deed for LR 22624.
 - ii. Copy of agreement for sale of the suit land between the two defendants dated April 5, 2021.
 - iii. Copy of certificate of official search dated March 30, 2021.
 - iv. Copy of transfer form registered on June 23, 2021 showing a picture of a man but no name. This man is said to be the transferor.
 - v. Copy of application for registration dated June 23, 2021.
 - vi. Copy of receipt dated June 23, 2021 for transfer fees of LR 2801.
 - vii. Copy of application for consent of the Land Control Board for subdivision of the suit land.
 - viii. Copy of receipt dated July 23, 2021 for Kshs 1000/- issued at the second defendant.
 - ix. Copy of consent to subdivide LR 2801 dated July 29, 2021 issued to the second defendant.
 - x. Copy of mutation form for the suit land dated August 27, 2021.
 - xi. Copy of receipt dated August 27, 2021 for mutation of the suit land.
 - xii. Copy of receipt dated August 27, 2021 for mutation of the suit land.
6. Counsel for the plaintiff and the second defendant filed written submissions on July 22, 2022 and August 1, 2022. The submissions raise the issue as to whether the three prerequisites to the grant of an order of injunction have been met or not.

While the plaintiff's counsel urges that the three conditions have been met, the second defendant's counsel urges that they have not been met.
7. I have carefully considered the application dated April 4, 2022 in its entirety including the affidavits, grounds, annexures, written submissions by the learned counsel and the case law cited therein. I make the following findings.



Firstly, I find that the plaintiff has established a *prima facie* case with a probability of success. He has deposed in his affidavit that he owns the suit land No 2801. He has also deposed that he has never sold it to the first defendant or anybody else. This deposition is corroborated by the first defendant who has deposed that he has never owned the suit land or sold it to anybody including the second defendant.

Secondly, the plaintiff has shown that there may have been fraud in the registration of the land in the names of the two defendants. He will therefore suffer irreparable loss if land that he claims is dealt with by the defendants before their acquisition of the same is in question.

The defendants have not offered any security for due performance of any decree that may issue against them. If the suit land were to be alienated by strangers who have no privity of contract with the plaintiff, there is no guarantee that he will be compensated for his land.

The balance of convenience also tilts in favour of the plaintiff who has everything to lose if the land is alienated by people he says he does not know and who he never sold the suit land to.

For the above stated reasons, I allow the notice of motion dated April 4, 2022 in terms of prayers 3 and 4.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19TH DAY OF DECEMBER, 2022.

MN GICHERU

JUDGE

