



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 21 OF 2020

FREDRICK GITONGA RINKANYA.....PLAINTIFF

VERSUS

GEOFFREY MWAURA NJOROGE.....1ST DEFENDANT

CHIEF LANDS REGISTRAR.....2ND DEFENDANT

LANDS REGISTRAR, KAJIADO.....3RD DEFENDANT

ATTORNEY GENERAL.....4TH DEFENDANT

RULING

By a Notice of Motion application dated the 9th April, 2020, the Plaintiff seeks for orders of temporary injunction in respect to land parcel number KJD / KITENGELA / 4462 pending the hearing and determination of this suit. Further, that an inhibition order be issued inhibiting the registration of any dealings such as transfer, charge or lease on KJD/ KITENGELA/ 4462 hereinafter referred to as the 'suit land' pending the determination of this suit.

The application is premised on the grounds on the face of it and the supporting affidavit of FREDRICK GITONGA RINKANYA where he deposes that he purchased the suit land from Simon Kamau Njau (now deceased) in 1993 at a consideration of Kshs. 125, 000/= and a transfer was effected in his favour. He contends that sometime in 2015, he undertook a routine search of the suit land at the Kajiado Lands Registry to ascertain its status. Further, the results of the search revealed that the suit land had been fraudulently transferred to the 1st Defendant sometime in the year 1998. He claims to have reported the matter to the 3rd Defendant who advised that the matter be taken up with the Interested Party to resolve the fraudulent transaction. He explains that the matter was taken up by an officer Ndegwa of DCI Kajiado who commenced investigations and recorded various statements. Further, the matter remains unresolved. He admits to have placed a restriction on the suit land to prevent any further irregular dealings. He has reliably been informed that the 1st Defendant or his agents are in the process of selling the suit land and showing it off to prospective buyers with the intention of disposing of the same.

The Defendants though served failed to file a response to oppose the application.

The Plaintiff filed his submissions to canvass the application.

Analysis and Determination

Upon consideration of the instant Notice of Motion date 9th April, 2020 including the supporting affidavit and submissions, the following are the issues for determination:

- **Whether an order of temporary injunction should issue pending the outcome of the suit**
- **Whether an inhibition order should be registered against land parcel number KJD / KITENGELA / 4462 pending the hearing and determination of this suit.**

As to whether an order of temporary injunction should issue pending the outcome of the suit.

The Plaintiff in his submissions contended that he had satisfied the tests of granting an injunction. Further, that he had established a prima facie case as he was the registered proprietor of the suit land which was fraudulently transferred to the 1st Defendant. Further, that he will suffer irreparable harm if the orders sought are not granted and the balance of convenience tilts in his favour. To buttress his averments, he

relied on the following decisions: **Dorcas Muthoni & 2 others V Michael Ireri Ngari (2016) eKLR**; **Mrao Limited Vs. First American Bank of Kenya Limited & 2 others (2003) KLR 125**; **Central Bank of Kenya & Another V Uhuru Highway Development Ltd & 4 Others ; Nairobi Court of Appeal Civil Applic. No. 312 of 2005**; **Hutchings Biemer Ltd V Barclays Bank of Kenya Ltd & Another (2006) eKLR** ; **Tritex Industries Limited & 3 others V National Housing Corporation & Another (2014) eKLR**; **Thomas Mungiria & 9 Others Vs Joseph Mutuma & 4 others (2012) eKLR** and **Shivabhai Patel V Manibhai Patel (1959) EA 907**.

In order to determine whether the Plaintiff has established a prima facie case to warrant the orders sought, I will rely on the principles on injunction as enshrined in the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358**. Further the Court of Appeal in the case of **Mrao Limited Vs. First American Bank of Kenya Limited & 2 others (2003) KLR 125** provided an apt definition of a prima facie case which I will also rely on.

It is not in dispute that the Plaintiff was previously as the registered proprietor of the suit land. It is further not in dispute that the 1st Defendant is the current registered proprietor of the suit land. What is in dispute is that the Plaintiff denies transferring the suit land to the 1st Defendant and claims he only discovered when he conducted a search in 2015 at the Kajiado Land Registry that the land had been fraudulently transferred to the 1st Defendant. He explained that he reported the matter to the DCI but despite investigations, the matter is yet to be resolved. He has since discovered that the 1st Defendant is attempting to sell the said land. The Defendants though duly served failed to file a response to oppose the application hence the Plaintiff's averments remain uncontroverted. Based on the facts as presented and relying on the two cited decisions, I find that the Plaintiff has indeed established a prima facie case as against the defendants to warrant the grant of orders sought.

On the second principle as to whether the Plaintiff stands to suffer irreparable loss which cannot be compensated by way of damages. From the Court record the 1st Defendant has not denied the Plaintiff's averments. Further, from the Green Card and the Certificate of Title, it is evident that the Plaintiff had indeed been the registered proprietor of the suit land before the same was transferred to the 1st Defendant. The Plaintiff has alleged fraud and denied ever transferring the land to the 1st Defendant. Further, the Plaintiff has claimed the 1st Defendant is attempting to dispose of the land to a third party to his detriment. In the case of **Case of Nguruman Ltd. Vs. Jan Bonde Nielsen CA No. 77 of 2012**, it was held that:

‘ ...the applicant must establish that he ‘might otherwise’ suffer irreparable injury which cannot be adequately compensated remedied by damages in the absence of an injunction, this is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot ‘adequately’ be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy. ‘

Based on my analysis above and associating myself with this decision, I find that the Plaintiff's injury are not speculative as he will indeed suffer grave and irreparable injury if the suit land is disposed to a third party before the court has made a determination on its ownership.

On the question of balance of convenience, from the evidence presented by the Plaintiff I am not in doubt that if the suit land is not preserved pending the determination of the dispute herein, it will indeed be wasted away. In the circumstance, I find that the balance of convenience indeed tilts in favour of the Plaintiff.

As to whether an inhibition order should be registered against land parcel number KJD / KITENGELA / 4462 pending the hearing and determination of this suit. Since I have already held that the suit land should be preserved, while relying on Order 40 of the Civil Procedure Rules, and section 68 (1) of the Land Registration Act, and associating myself with the case of **Dorcas Muthoni & 2 others V Michael Ireri Ngari (2016) eKLR** where the court granted an order of inhibition to preserve the suit land, I find that it would be pertinent if an inhibition order was indeed registered against land parcel number KJD / KITENGELA / 4462 to preserve it.

It is against the foregoing that I find the application dated the 9th April, 2020, merited and will allow it.

I further order the Land Registrar, Kajiado do register an inhibition order against land parcel number KJD / KITENGELA / 4462 pending the hearing and determination of this suit.

Costs will be in the cause.

Dated signed and delivered virtually at Kajiado this 26th day of January, 2021.

CHRISTINE OCHIENG

JUDGE