



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANG'A

ELC NO. 21 OF 2019

MARGARET WAMBUI KAMAU.....1ST PLAINTIFF/APPLICANT

KARIUKI KARANJA..... 2ND PLAINTIFF/APPLICANT

ELIAS KARANJA MWANGI.....3RD PLAINTIFF/APPLICANT

VS

EUTYCHUS MWANGI KARANJA.....1ST DEFENDANT/RESPONDENT

DAVID MUIGAI MWANGI 2ND DEFENDANT/RESPONDENT

JAMES KAMAU KARUTHUI3RD DEFENDANT/RESPONDENT

MICHUGU MWANGI.....4TH DEFENDANT/RESPONDENT

RULING

1. The Applicants filed this application on the 25/11/2020 seeking orders of injunction restraining the 1st Respondent from interfering with the suit land LOC 2 /MAKOMBOKI/154 by disposing it to Apostolic Faith Church pending the hearing and determination of the suit.
2. The application is premised on the grounds averred vide the affidavit of the 1st Applicant who has stated that she learnt in 2016 that the 1st Defendant was in the process of illegally selling a portion in the suit land to the Church whereupon her lawyers dispatched a demand letter to him warning her of the action. That on the 20th and 21st November 2020 she noticed building materials being delivered on the plot ostensibly to construct a church on the said premises.
3. The application is opposed on the grounds inter alia that it is misconceived incompetent and bad in law. That the suit land does not exist on account that it has been subdivided into new parcels and the original number extinguished.
4. Parties filed written submissions which I have read and considered.
5. In the case of **Mbuthia vs Jimba Credit Corporation Ltd [1988] KLR] Platt JA** held that in an application for interlocutory injunction, the Court is not required to make final findings of contested facts and law but only needs to weigh the relative strength of the parties cases. Equally in the case of **Pattni.Vs. ALI & 2 Others CA No. 354 OF 2004 (UR183/04)** the Court of Appeal held that in interlocutory applications, the orders that are sought do not decide the rights and obligations of the parties but are merely meant to keep matters in status quo pending such determination.
6. As to whether the Applicants have established a prima facie case with the chances of success, it is commonly accepted that the suit land parcel LOC 2 /MAKOMBOKI/154 was subdivided to yield inter alia parcel No. LOC 2 /MAKOMBOKI/1297 which portion the Applicant has averred is in occupation and the 1st Defendant is in the process of selling to the Apostolic church. The Respondent has not denied this save to state that the original title was subdivided and the original number is extinguished. The Applicant having on a prima facie basis established that she is in possession and occupation, in my view is a strong ground to find in her favour.
7. As whether the Applicant stands to suffer irreparable loss if the injunction is granted, the gist of the suit is premised on the legality or otherwise of the subdivision of the main title. The Applicant has averred that she and her family have lived on parcels LOC 2 /MAKOMBOKI/1297 and LOC 2 /MAKOMBOKI/1298 since 1972. Parcel LOC 2 /MAKOMBOKI/1297 is the impugned title which the Applicant is apprehensive is being disposed by the 1st Defendant. I find that if the injunction is not granted the Applicants stand to be evicted from the suit land portion of LOC 2 /MAKOMBOKI/1297. This limb therefore succeeds.

8. In **Paul Gitonga Wanjau vs. Gathuthis Tea Factor Company Ltd & 2 others (2016) eKLR**, the Court while dealing with the issue on balance of convenience held that: -

"Where any doubt exists as to the Applicants' right, or if the right is not disputed, but its violation is denied, the Court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which injury the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the Court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The Court will seek to maintain the status quo in determining where the balance on convenience lies. "

9. In this case, the Applicants have been in occupation and therefore the balance of convenience tilts in their favour.

10. The application is merited and orders to maintain Status quo are hereby granted pending the hearing and determination of the suit in the following terms:

"That, pending the hearing and determination of this suit a temporary injunction be issued restraining the 1st Defendant, his agents and/or servants from selling, alienating, and/or disposing off any plot in Land Parcel NO. LOC.2/MAKOMBOKI/154 specifically to Apostolic Faith Church Makomboki as the suit premises is the subject matter to this case".

11. The application is allowed with no orders as to costs.

12. It is so ordered.

DATED, SIGNED & DELIVERED ONLINE THIS 11TH DAY OF MARCH 2021.

J. G. KEMEI

JUDGE

Delivered online in the presence of;

Ms Kiarie HB for Ndungu Mwaura for the Plaintiffs/Applicants

Gikonyo HB Wahome for the 1st Defendant/Respondent

2nd – 4th Defendants – Absent

Njeri, Court Assistant