



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 21 'B' OF 2020**

**FREDRICK GITONGA RINKANYA.....1<sup>ST</sup> PLAINTIFF**

**ROSEMARY KANYUA GITONGA.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**RAYMOND KARANI.....1<sup>ST</sup> DEFENDANT**

**GAYE JACQUILINE NGULILI AGESA.....2<sup>ND</sup> DEFENDANT**

**SAMUEL GATUGI KIMANI.....3<sup>RD</sup> DEFENDANT**

**CHIEF LANDS REGISTRAR.....4<sup>TH</sup> DEFENDANT**

**LANDS REGISTRAR, NGONG.....5<sup>TH</sup> DEFENDANT**

**LANDS REGISTRAR, KAJIADO.....6<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL.....7<sup>TH</sup> DEFENDANT**

**AND**

**DIRECTORATE OF CRIMINAL INVESTIGATION.....INTERESTED PARTY**

**RULING**

By Notice of Motion application dated the 23<sup>rd</sup> April, 2020, the Plaintiff seeks for orders of temporary injunction in respect to land parcel number NGONG/ NGONG/ 9140 hereinafter referred to as the 'suit land', pending the hearing and determination of this suit. Further, that an inhibition order be issued inhibiting any dealing on 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 together with the 2<sup>nd</sup> Plaintiff who is his wife, from one Phineas Ashford Miriti in 1992 at a consideration of Kshs. 100, 000/= and a transfer was effected in his favour. He contends that they have enjoyed quiet possession of the suit land. He explains that sometime in the year 2015, they undertook a routine search of the suit land at the Kajiado Lands Registry (the 6<sup>th</sup> Defendant herein) to ascertain its status. Further, the results of the search revealed that the Green Card was missing from the registry and they had another one reconstructed in accordance with the law. He confirms that they verified the particulars contained in the reconstructed Green Card and they indeed corresponded with the initial one. He explains that in 2018 they set out to undertake some activities on the suit land but they were confronted with accusation of trespass, an incident that culminated in a dispute before the Ongata Rongai Police Station. Further, they presented the ownership documents at the said station and they were introduced to one Samuel Kimani the 3<sup>rd</sup> Defendant herein who claimed to be the owner of the suit land. He avers that they obtained a certified copy of the Green Card which revealed certain irregular transfers on the suit land in particular entries No. 6 dated 24<sup>th</sup> March, 2011, entry No. 8 dated 3<sup>rd</sup> June, 2015 and No. 10 dated 23<sup>rd</sup> May, 2018. He reiterates that the injustices have not been reversed and admits having placed a restriction on the suit land to prevent any further irregular dealings. He has reliably been informed that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and or their agents are in the process of disposing of the suit land and are showing it off to prospective buyers.

The Defendants though served failed to file their respective responses to oppose the instant application.

The Plaintiffs filed their submissions to canvass the instant application.

## Analysis and Determination

Upon consideration of the instant Notice of Motion application 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 NGONG/ NGONG/ 9140 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 Plaintiffs in their submissions stated that they had met the threshold set for granting an injunction pending the outcome of the suit. Further, that they had established a prima facie case as they were the registered proprietor of the suit land which was fraudulently transferred to the 3<sup>rd</sup> Defendant who in turn transferred it to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. They further submitted that they will suffer irreparable harm if the orders sought are not granted and the balance of convenience tilts in their favour. To buttress their averments, they relied on the following decisions: **Ace Engineering & Building Contractors Limited Vs National Bank of Kenya Limited (2019) Eklr that favourably cited the case of Giella Vs Cassman Brown & Company Limited (1973) EA 358; Mrao Limited Vs. First American Bank of Kenya Limited & 2 others (2003) KLR 125; Nguruman Ltd Vs Jan Bonde Nielsen & 2 others ( 2014) Eklr; Christopher Mwangi Kaharu Vs Peter Muturi Kanyugo ( 2016) Eklr; Paul Gitonga Wanjau Vs Gathuto Tea Factory Limited & 2 Others ( 2016) Eklr; and Samuel Njeru Daniel Vs James Njeru Nthiga & 2 others ( 2017) Eklr.**

In line with the principles on injunction as enshrined in the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358**, I will proceed to interrogate whether the Plaintiffs' have established a prima facie case to warrant the orders sought. As to what constitutes a prima facie, the Court of Appeal in the case of **Mrao Limited Vs. First American Bank of Kenya Limited & 2 others (2003) KLR 125** stated that it is a case in which on the materials presented to the court or tribunal, it will conclude there is an apparent right which has been infringed upon by an opposite party to call for an explanation or rebuttal.

From the documents presented in the supporting affidavit, it is evident the Plaintiffs were registered as proprietors of the suit land on 19<sup>th</sup> June, 1992 after adhering to the proper legal process in acquiring the said land. It is further not in dispute that currently the suit land is registered in the names of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as evident in the Green Card which was presented herein. Further, that it is the 3<sup>rd</sup> Defendant who had transferred the said land to them. What is in dispute is that the Plaintiffs deny transferring the suit land to any third party and allege fraud on the part of the Defendants. The Plaintiffs claimed to have discovered the anomaly in respect to the suit land when they conducted a search in 2015 at the Kajiado Land Registry. Further, that they reported the matter to the DCI but the same is yet to be resolved. They have since discovered that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are attempting to sell the said land. The Defendants though duly served failed to file a response to oppose the application hence the Plaintiffs' averments remain uncontroverted. Based on the facts as presented and relying on the two cited decisions, I find that the Plaintiffs have indeed established a prima facie case as against the defendants to warrant the grant of the orders sought.

On the second principle as to whether the Plaintiffs stand to suffer irreparable loss which cannot be compensated by way of damages. From the Court record the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have not denied the Plaintiff's averments. Further, from the Green Card and the Certificate of Title, it is evident that the Plaintiffs had indeed been the registered proprietors of the suit land before the same was transferred to the 3<sup>rd</sup> Defendant who thereafter transferred it to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The Plaintiffs have alleged fraud and denied ever transferring the land to the said Defendants. Further, the Plaintiffs claim the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are now attempting to dispose of the land to a third party to their 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 Plaintiffs' injury are not speculative as they 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 Plaintiffs 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 Plaintiffs.

As to whether an inhibition order should be registered against land parcel number NGONG/ NGONG/ 9140 pending the hearing and determination of this suit. Since I have already held that the substratum of the suit which is the suit land herein should be preserved pending the outcome of the suit; while relying on Order 40 of the Civil Procedure Rules, and section 68 (1) of the Land Registration Act including associating myself with the case of **Dorcas Muthoni & 2 others V Michael Ileri Ngari (2016) eKLR** where the court granted an order of inhibition to preserve a suit land, I find that it would be pertinent if an inhibition order was indeed registered against the said parcel of land so as to preserve it.

It is against the foregoing that I find the application dated the 23<sup>rd</sup> April, 2020, merited and will allow it.

I further order the Land Registrar, Kajiado North do register an inhibition order against land parcel number NGONG/ NGONG/ 9140 pending the hearing and determination of this suit.

Costs will be in the cause.

**Dated signed and delivered virtually at Kajiado this 3<sup>rd</sup> Day of March, 2021.**

**CHRISTINE OCHIENG**

**JUDGE**