



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUSIA

ELC. NO 52 OF 2016

MARY AKUKU OKULO.....PLAINTIFF/RESPONDENT

= VERSUS =

ROSELIDA NAMBIRO.....DEFENDANT/APPLICANT

R U L I N G

1. The Defendant/Applicant has moved this Court under the provisions of Section 3A of the Civil Procedure Act and Order 17 Rule 2 of the Civil Procedure Rules in her notice of motion dated 13th November 2020. The Applicant prays for the said orders;

a) Spent.

b) Spent.

c) Pending interpartes hearing and determination of the substantive suit an order of injunction be and is hereby issued restraining the respondent/plaintiff, her agent, derivatives assigns, representatives or any other persons acting under her name, authority and/or title from trespassing any dispute, surveying, sub-dividing, registering new mutations and/or in any other manner dealing with LR. No. BUKHAYO/MUNDIKA/7556, 7644 and 7645 pending hearing and determination of this suit.

2. The application is supported by the grounds on the face of it inter alia;

(i) That the applicant/defendant is the registered proprietor of LR. NO. BUKHAYO/MUNDIKA/7644 and 7645 sub divisional titles of LR. BUKHAYO/MUNDIKA/7556 to the exclusion of the plaintiff.

(ii) That the defendant has filed a dispute over the suit with the land registrar and surveyor who are determined to deal with the properties total disregard of applicants proprietary rights over the suit parcels and before this suit is heard and determined.

(iii) That the actions of the respondent intended to alienate the suit parcels of land which the applicant legally purchased from a 3rd party.

3. The application is opposed by the Plaintiff/Respondent who filed a Replying Affidavit deposing that she is the administratrix of the estate of the late Francis Okuku. The Respondent stated that once the grant was confirmed, she registered the RL7 and RL19 forms in respect of the suit land at the lands office and the estate was transferred to her children. According to her, the application for rectification of grant made to the Principal Magistrates Court and a rectified grant was issued through fraudulent means. Further, that the original grant was then equally manipulated to accommodate new changes causing one of the beneficiaries to get 6 acres instead of 3 acres as was agreed.

4. The Respondent deposed further that she lodged a complaint with the Deputy Registrar Busia and the then District Land Registrar prepared a detailed report on how the Applicant was allegedly party to fraudulent dealings as shown in the letter dated 1/4/2015. That the Applicant filed an objection proceeding against the grant issued to the Respondent but the same was dismissed. The Respondent has stated that the Land Registrar was effecting the Court Order issued in suit No. BUSIA HCP&A No. 318 of 2014 and the Applicant wanted to block it. Further, that the Applicant is trying to frustrate the Respondent from doing any activity on the land through filing various law suits in court.

5. Both parties filed submissions which this Honourable Court has considered. The principles of injunctions were enunciated in the case of **GIELLA VERSUS CASSMAN BROWN (1973) EA 358** and reiterated in the case of **Nguruman Limited versus Jan Bonde Nielsen & 2 others CA No.77 of 2012 (2014) eKLR** where the Court of Appeal held that;

“In an interlocutory injunction application the applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”

6. From the pleadings, it is not in dispute that the Applicant is currently the registered owner of the suit property. She got registered as shown in the green card and copy of title in December 2002 which is quite along time before this suit was brought in the year 2016. The Respondent has brought this suit to challenge the registration of the Applicant alleging the title was acquired through fraud. Until it is determined that the Applicant’s title was illegally acquired, it serves the interest of justice that the title and possession of the Applicant be preserved so that she is not condemned unheard.

7. While the suit is pending, the Respondent who brought the suit decided to engage the Land Registrar to implement an order issued in a different matter. From the depositions of the Applicant, if the survey exercise is allowed to proceed, she will be greatly prejudiced. Since both parties are claiming ownership of the suit property, it is important that the suit property be preserved in its current status until the case is heard and determined. The court must ensure no conflict or combat is generated by the order for maintenance of status quo.

8. I am satisfied that there is merit in the application and grant the orders of temporary injunction restraining the respondent/plaintiff, her agents, derivatives, assigns, representatives or any other persons acting under her name, authority and/or title from trespassing on, surveying, sub-dividing, registering new mutations and/or in any other manner dealing with LR. No. BUKHAYO/MUNDIKA/7556, 7644 and 7645 pending hearing and determination of this suit.

9. The costs of the application are ordered in the cause.

DATED, SIGNED AND DELIVERED AT BUSIA THIS 29TH DAY OF APRIL, 2021.

A. OMOLLO

JUDGE