



**Muriungi v M'igweta (Environment & Land Case E001 of 2020)
[2023] KEELC 427 (KLR) (1 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 427 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E001 OF 2020**

CK NZILI, J

FEBRUARY 1, 2023

BETWEEN

PETER MUGAMBI MURIUNGI PLAINTIFF

AND

STANLEY MURERWA M'IGWETA DEFENDANT

RULING

1. Before the court is the application dated October 8, 2020 seeking for inhibition and temporary orders of injunction in relation to LR No. Nyambene/Old Kiare/2754, pending the hearing and determination of the suit. The application is premised on a supporting affidavit by Peter Mugambi Muriungi sworn on the even date. The grounds are that by a sale agreement dated July 16, 2013, one Zakayo M'Kabau deceased sold to the plaintiff a portion of the suit land at Kshs.400,000/= and sub-divided the land. That prior to his death (seller) he took vacant possession; developed the land; executed the transfer forms; submitted the same to the land registrar and paid the requisite transfer fees and charges. He attached copies of the supporting documents herein as annexures marked PMM 1-4 respectively.
2. Further the plaintiff applicant averred that this was done with the full knowledge of the defendant and other family members since his designated portion was LR No. Nyambene/Old Kiare/2754.
3. The application is opposed through the defendant's replying affidavit sworn on October 26, 2020. The defendant averred that he was a bonafide purchaser with effect from June 26, 2014; of L.R No. Nyambene/Old Kiare/2754 measuring 4 acres from the late Zakayo Ekabu M'Ekabu. He attached the following documents; an official search dated June 26, 2014; fees receipt, application for land control board consent, consent to transfer issued on August 19, 2014; transfer forms with all the completion documents; stamp duty payment demand note; payment of stamp duty receipt; duly issued title deed; photos showing occupation of the land as annexures marked SM 1 (a), (b) – SM 8 respectively. He therefore termed the claim by the plaintiff as late, coming only after the seller died on May 25, 2015



- and also based on a sale agreement containing unexplained alterations, varying signatures and based on a land parcel which was not clear.
4. Following an order dated November 17, 2020, the executive officer of the court visited the land and filed a scene visit report dated February 8, 2020. The report established that both parties were undertaking farming activities on the land with the plaintiff tilling the lower side and the defendant the upper side.
 5. The principles for the grant of an injunction have been set out in various cases including *Giella v Cassman Brown Co. Ltd* [1973] E.A, 358, *Paul Gitonga Wanjau v Gathuthi Tea Factory Co. Ltd & 2 others* [2016] eKLR, *American Cynamaid Co. v Ethicon Ltd vs First American Bank of Kenya & 2 others* [2003] KLR 125 *Moses C. Mubia Njoroge & 2 others v Jane W. Lesaloi & 5 others* [2014] eKLR.
 6. A party must establish a prima facie case with a probability of success, demonstrate the likelihood of suffering irreparable loss and damage and that the balance of convenience tilts in favour of granting the injunction.
 7. A *prima facie* case is established where a court directing its mind to the material before it would conclude that a right has been infringed calling for a rebuttal from the opposite side. See *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR.
 8. As to both temporary injunction and inhibition, the court in *Dorcas Muthoni & 2 others v Michael Ireri Ngari* (2016) eKLR observed that an order for inhibition issued under section 68 of the *Land Registration Act* was similar to an order for prohibitory injunction which bars the owner of property under dispute from registering any transaction over the said property until further orders or until the suit is disposed of.
 9. In *Japhet Kaimenyi M'Ndatho v M'Ndatho M'Mbiwiria* (2013) eKLR, Makau J as he then was now retired stated that the conditions before the grant of inhibition includes: - whether the suit property is at risk of being disposed off to the detriment of the applicant, unless preservative orders do issue; that the refusal of the inhibition orders would render the applicant's suit nugatory and lastly, the applicant has an arguable case.
 10. In *Joseck Njue Mbaka v Kuura Murango; Purity Mukami Njue (intended 2nd respondent/interested party)* [2022] eKLR, the court was faced with a situation where a party had subdivided the land during the pendency of the suit. The court held that the changes had been made in bad faith with a sole aim of stealing a march against the applicant making a case for real risk of dealing with the land in a manner that could defeat the interest of justice. The court found the applicant to have demonstrated an arguable case requiring an order for inhibition.
 11. In this suit, both parties claim a purchaser's interest from the previous owner of the suit land, the late Zakayo Ekabu M'Ekabu. The plaintiff applicant is possessed with a sale agreement dated July 16, 2013, a transfer form dated November 26, 2014, an application for land control board consent dated August 1, 2014 and tax payment receipt for stamp duty dated May 9, 2014. On the other hand, the defendant averred that he bought the land a year later on June 26, 2014, applied for a land control board consent on June 26, 2014 and which was issued on August 19, 2014. Thereafter, a transfer dated August 27, 2014 was executed and a title deed issued on April 24, 2015.
 12. Both parties have also averred that after the transactions with the seller, they took vacant possession of their respective portions. This occupation was confirmed through the scene visit report. Other than farming activities, no other permanent developments have been affected by the parties.



13. In view of the foregoing and based on the material before court, I am inclined to grant a prayer for inhibition against the title LR No. Nyambene/Old Kiare Scheme/2754 till the hearing and determination of the suit.
14. As regards the order for temporary injunction since each of the parties is farming on an identified portion of the suit land, the most efficacious order in the circumstances is for the maintenance of the status quo as defined in the scene visit report dated February 8, 2020 till the hearing of the suit. Parties to comply with Order 11 of the *Civil Procedure Rules* and set down the suit for hearing on priority basis.
Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT

THIS 1ST DAY OF FEBRUARY, 2023

In presence of:

C/A: Kananu

Maranya for defendant

Mr. Muthomi holding brief for Kiogora Mugambi for plaintiff

HON. C.K. NZILI

ELC JUDGE

