



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC CASE NO. E 179 OF 2020

GIDEON MUGAMBI BAITHIRI.....PLAINTIFF

VERSUS

GEORGE KINGI OYARO OMWOYO.....1ST DEFENDANT

CABINET SECRETARY

MINISTRY OF LANDS AND PHYSICAL PLANNING.....2ND DEFENDANT

CHIEF LAND REGISTRAR.....3RD DEFENDANT

RULING

1. The Plaintiff/Applicant filed a Notice of Motion dated 11th October 2020 in which he seeks the following orders: -

1) Spent

2) Spent

3) An order of interlocutory injunction do issue to restrain the 1st Defendant, by himself, his agents and/or servants and/or employees from entering physical possession, dealing with, transferring, selling, charging, or in any way whatsoever dealing with LR No. Nairobi/Block 136/9990, pending hearing and determination of this suit.

4) The costs of this application be provided for.

2. The Applicant contends that he was allocated LR No. Nairobi/Block 136 /9990 (suit property) by Embakasi Ranching Company Limited on 29th November 2018. The Applicant was taken to the ground by the company surveyor who showed him the Physical location of the suit property. Between 4th November 2020 and 22nd November 2020, the Ministry of Lands in conjunction with Embakasi Ranching Company Limited undertook an exercise where genuine land owners were to be issued with title deeds for their respective plots.

3. The Applicant signed documents in preparation of issuance of title deed. The documents were forwarded to the Ministry of Lands for processing of leases and titles. In the meantime, the Applicant went and deposited building materials on the suit property. It is at this time that the 1st Respondent claimed the same property. When the Applicant did a search at the Lands Office, it turned out that the 1st Respondent had been issued with title to the suit property.

4. The Applicant contends that when he was taken to the ground, the suit property was vacant. The Applicant argues that the 1st Respondent has colluded with Ministry of Lands officials to defraud him of the suit property.

5. The 1st Respondent opposed the Applicant's application based on a replying affidavit sworn on 25th November 2020. The 1st Respondent states that he purchased the suit property from Embakasi Ranching Company Limited in 2006. He took possession and constructed a house on the same and planted trees on the remaining portion. The trees are mature and that his compound is fenced and that there is no way one would have accessed it without his permission.

6. When the Ministry of Lands planned issuance of title to the land owners within Embakasi , he forwarded his name which was duly verified by Embakasi Ranching Company officials and forwarded to the Ministry of Lands who issued him title in accordance with the list of names

which were forwarded by Embakasi Ranching Company Limited.

7. The 1st Respondent contends that the suit property was not available for allocation to any other person in 2018 after he had been in possession for over a decade. The 1st Respondent annexed photographs of the house on the suit property which shows an old house and mature trees on part of the suit property.

8. I have considered the Applicant's application as well as the opposition to the same by the 1st Respondent. I have also considered the oral submissions by the Applicant and the 1st Respondent. The principles for grant of a temporary injunction are clear. See **Giella CVs Casman Brown & Co.Ltd (1973) EA 358**. First an Applicant has to demonstrate that he has a prima facie case with probability of success. Secondly, an injunction will not be given unless the Applicant will suffer loss which will not be compensatable in damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.

9. In the instant case, the Applicant has no title in his name. He states that he was allocated the suit property in 2018. The 1st Respondent purchased the suit property in 2006. He has constructed a house on the same and there are mature trees on part of the suit property. The 1st Respondent has obtained title and is one in possession. In the circumstances, the Applicant has not demonstrated that he has a prima facie case with probability of success.

10. The purpose of an injunction is to preserve the suit property. In the instant case, it is the 1st Respondent who is in possession of the suit property. If it turns out that the 1st Respondent obtained the title fraudulently and that the house which has been exhibited by the 1st Respondent is not on the suit property as the Applicant alleges, the 1st Respondent can always be evicted therefrom. Land is capable of being valued and the Applicant may always be compensated.

11. Even on consideration of a balance of convenience, the convenience tilts in favour of the 1st Respondent who is in possession and has title to the suit property. To grant an injunction as prayed will be tantamount to granting an eviction order. I therefore find no merit in this application which is dismissed with costs to the 1st Respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 15th day of April 2021.

E.O.OBAGA

JUDGE

In the Virtual Presence of :-

Mr Ayora for 1st Defendant/Respondent

Mr Macharia for Plaintiff/Applicant

Court Assistant: Okumu

E.O.OBAGA

JUDGE