



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC. CASE NO. 60 OF 2020

LENGUR OLE SAIRI.....PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF KAJIADO.....1ST DEFENDANT

KAJIADO LANDS REGISTRAR.....2ND DEFENDANT

GRACE MUMBI MUTHONI.....3RD DEFENDANT

SHIRIMA FIRMINUS MSUE.....4TH DEFENDANT

ISAIAH WACHIRA GICHOHI.....5TH DEFENDANT

ROSE WANJIRU KARIUKI.....6TH DEFENDANT

PETER MORARA MOGERI.....7TH DEFENDANT

WESLEY RISANCHO KASUKU.....8TH DEFENDANT

MAGEH INVESTMENTS LIMITED.....9TH DEFENDANT

RULING

What is before Court for determination is the Plaintiff's Notice of Motion application dated the 15th September, 2020 where he seeks orders of a temporary injunction barring the Respondents, either by themselves, their agents, servants, assignees or any other person from entering, encroaching, trespassing, working, developing, constructing or disposing of land parcel numbers KJD/OL CHORO ONYORE/8727;8728 (subdivided into KJD/OL CHORO ONYORE/9463; 9464; 9466 and 9467); KJD/OL CHORO ONYORE/ 8729 (subdivided into KJD/OLCHORO ONYORE/9467; 9468, 9469 and 9470); KJD/OL CHORO ONYORE/8730 (subdivided into KJD/OL CHORO ONYORE/21243, 21244, 21245, 21246, 21247, 21248, 21249 and 21250) and KJD/OL CHORO ONYORE/8731, hereinafter referred to as the 'suit lands'.

The application is premised on the grounds on the face of it and the supporting affidavit of the Plaintiff LERNGUR OLE SAIRI who deposes that he is the owner of land parcel number KAJIADO/OL CHORO ONYORE/82 having been registered under the repealed Registered Land Act and has owned the land since inheriting the same from his father. He contends that in 2009, the 1st Defendant/Respondent, through the officials of the then defunct Municipal Council of Kajiado communicated their intentions to compulsorily acquire and utilize a portion of the land for public use. Further, in compensation thereto, the 1st Defendant/Respondent promised that they would allocate him alternative land within the municipality and he surrendered his title to them. He claims the said parcel of land was not required for public purposes. He has learnt that the 1st Defendant/Respondent's officials either by themselves, agents, relatives or proxies, unlawfully subdivided and allocated themselves parcels of land which had been unlawfully and illegally hived off. He states that the official searches show the 3rd to 9th Defendants/Respondents illegally registered the hived off suit lands. He avers that another sub division had been hived off from his land and title deed issued, being KJD/OL CHORO ONYORE/8735 and the same registered jointly in the names of TAUTA OLE LERINKON and JACKSON MPOYO SOMPE. Further, the parcel had been earmarked for a slaughterhouse but through intervention from the elders, the land reverted to him. He states that the 2nd Defendant/Respondent has connived with the Land Registry to deny him access to his file and refused to issue him with copies of official searches. He reiterates that the Defendants/Respondents have violated his right to property and he continues to suffer irreparable harm.

The Application was opposed by the 1st Defendant who filed Grounds of Opposition dated the 23rd October, 2020 where it contended that no evidence was tendered before court to demonstrate that the properties in dispute were in danger of being alienated or disposed of to warrant the granting of the orders sought. It insists the Plaintiff had not satisfied the conditions set out in the case of **Giella Vs Cassman Brown & Co. Ltd (1973) EA 358** on granting of interim injunctions. Further, the Plaintiff has not demonstrated that it had infringed on his right to property.

The 4th Defendant opposed the application by filing a replying affidavit where he deposes that the said application lacks merit as he is the registered proprietor of land parcel number KJD/OL CHORO ONYORE/8731 which he purchased from Beatrice Naisimoi Risa who held a valid title to it. He contends that there has been a previous dispute between the Plaintiff/Applicant's family and the 1st Defendant (then County Council of OL Kejuado) relating to the Plaintiff/Applicant's land KJD/OL CHORO ONYORE/82 occasioned by beacon position. He made reference to the proceedings in respect to the Land Disputes Tribunal and insists since the Plaintiff failed to Appeal, he waived his rights. He explains that the aforementioned proceedings almost put the Plaintiff's family in the brink of bankruptcy and they convened a meeting together with representatives from County Council of Ol kejuado to negotiate with a view of settling the dispute out of court. Further, the negotiations were successful and parties agreed to share the disputed 75 acre portion of land, which was subsequently subdivided and ultimately titles issued with the Plaintiff/Applicant herein benefiting. He explained that since the county earmarked a portion within the boundary for a slaughterhouse, four (4) acres would be donated for the same and the ACK Church, with the titles being registered in the name of the church as well as the community. Further, the Plaintiff/Applicant consented to the subdivisions and subsequent transfer. He avers that years later the Plaintiff/Applicant in desperation sought to recover the four (4) acres donated to the community where the slaughterhouse had been erected, which culminated in the said community releasing the land back to him. He reiterates that the Plaintiff/Applicant has conveniently ignored to reveal to the court of a previous dispute that gave rise to a section of the land which is the subject matter of this dispute. Further, the Plaintiff/Applicant has not come to court with clean hands and claims the 1st Defendant/Respondent denied him records from the Land Registry yet he has produced copies of a successful search. He states that the land has been subdivided over fifty (50) times, yet the Plaintiff/Applicant has only sued seven (7) owners. Further, no evidence has been tendered to demonstrate the properties in dispute are in danger of being alienated, wasted or disposed of.

The Plaintiff/Applicant filed a further affidavit where he reiterated his claim and insists Beatrice Naisimoi Risa did not hold a valid title to transfer to the 4th Defendant/Respondent, who has not demonstrated the procedure on how he acquired his land. He denied that there was a case in the Tribunal involving him. He insists he is the duly registered proprietor of land parcel number KAJIADO/OL CHORO ONYORE/82 which was illegally subdivided by the officials of the 1st Defendant/Respondent and illegal titles issued. He challenged the process of subdivision and sought for documents to prove the same.

The application was canvassed by way of written submissions.

Analysis and Determination

Upon consideration of the Notice of Motion application dated the 15th September, 2020 including the respective affidavits, Grounds of Opposition and rivalling submissions, the only issue for determination is whether the Plaintiff is entitled to orders of temporary injunction restraining the Defendants from interfering with the suit lands pending the outcome of the suit.

The Plaintiff in his submissions avers that he has established a prima facie case with a probability of success and is hence entitled to the orders sought. He reiterates that the Defendants through their aforementioned actions have infringed on his rights and he stands to suffer irreparable injury. He has filed this suit in a bid to recover his land and balance of convenience tilts in his favour. To buttress his averments, he has relied on the following decisions: **Giella Vs Cassman Brown & Company (1973) EA 358; Mrao Ltd Vs First American Bank of Kenya & 2 Others (2003) eKLR; Antoine Ndiaye Vs Africa Virtual University (2015) eKLR; Assanand V Pettitt (1979) KLR; Robert Mugo Wa Karanja V Ecobank (Kenya) Limited & Another (2019) eKLR and Pius Kipchirchir Kogo V Frank Kimeli Tenai (2018) eKLR.**

The 1st Defendant in its submissions contend that the Plaintiff has not established a prima facie case to warrant the orders sought as he does not provide proof that it compulsorily acquired his land. Further, he does not name the officials from the 1st Defendant who defrauded him. It insists it did not acquire the suit lands and neither is it in current possession. It reiterates that the value of the suit land can be ascertained and the Plaintiff may be awarded damages as compensation. Further, that the balance of convenience lies in refusing the injunction. To support its arguments, it relied on the following cases: **Giella Vs Cassman Brown & Company (1973) EA 358; Mrao Ltd Vs First American Bank of Kenya & 2 Others (2003) eKLR; Robert Mugo Wa Karanja V Ecobank (Kenya) Limited & Another (2019) eKLR; Nguruman Ltd. Vs. Jan Bonde Nielsen (2014) eKLR and Total Kenya Limited V David Njane t/a Argwings Twin Service Station & 2 Others (2018) eKLR.**

The 4th Defendant in his submissions insists the Plaintiff has failed to meet the threshold set for granting an injunction. He reiterated the contents of his replying affidavit. He avers that the Plaintiff has not established a prima facie case and will not suffer any injury if the orders sought are declined. Further, the balance of convenience does not tilt in his favour. To support his arguments, he has relied on the following decisions: **Giella Vs Cassman Brown & Company (1973) EA 358; Mrao Ltd Vs First American Bank of Kenya & 2 Others (2003) eKLR; Nguruman Ltd. Vs. Jan Bonde Nielsen (2014) eKLR; Kenya Commercial Finance Co. Ltd V Afraha Education Society (2001) VOL. 1 EA 86;**

As to whether the Plaintiff has established a prima facie case with probability of success at the trial, I will rely on the decisions of **Giella Vs Cassman Brown & Company (1973) EA 358** as well as the definition of a prima facie case as stated in the case of **Mrao Ltd Vs First American Bank of Kenya & 2 Others (2003) eKLR** to decipher the same. The Plaintiff claims he is the owner of land parcel number KAJIADO/OL CHORO ONYORE/82 and that in 2009, the 1st Defendant, through the officials of the then defunct Municipal Council of Kajiado communicated their intentions to compulsorily acquire and utilize a portion of the said land for public use. He contends that as compensation, the 1st Respondent promised to allocate him alternative land within the municipality. He admits surrendering his title to the 1st Defendant but now states that the land was not acquired for public purposes. He has learnt that the 1st Defendant's officials either by

themselves, agents, relatives or proxies, unlawfully subdivided and allocated themselves parcels of land which had been unlawfully and illegally hived off. He states that the official searches show the 3rd to 9th Defendants illegally registered the hived off suit lands.

From the annexures in the respective affidavits, there is no evidence that the Plaintiff's land was compulsorily acquired by the 1st Defendant. The Plaintiff has not named the officials who told him his land was being compulsorily acquired. The Plaintiff has not indicated what took him so long to stake his claim over the land. He claims the 1st Defendant made him not obtain searches yet he has produced the same, which fact I find contradictory. The Plaintiff has not controverted the 1st Defendant's averments that the land has been subdivided over fifty (50) times, yet he only sued seven (7) people. I note he seeks injunctive reliefs against persons who own their land and except for his averments on how the same was illegally distributed, he has not indicated if he lodged criminal proceedings against them. I note in the Mutation for KJD/ OL CHORO ONYORE/8859, it is actually the Plaintiff who is indicated as having applied for sub division. Further, he claims he got back the land meant for the slaughterhouse but does not explain the procedures he adhered to. From the facts as presented by the Plaintiff, I find that he is not being candid. Further, I note the 1st Defendant has raised the issue of third parties who have since been registered as owners of the resultant sub divisions of the suit land, who are not parties to this suit. In the circumstances while associating myself with the decisions cited above, at this juncture I find that the Plaintiff has not established a prima facie case to warrant the orders of injunction sought. Further, in relying on the Case of **Nguruman Ltd. Vs. Jan Bonde Nielsen (2014) eKLR** where it was held that in instances when a party fails to establish the first limb on injunctions, the court need not proceed to decide on the other two limbs and I will hence decline to do so.

It is against the foregoing that I find the Plaintiff's Notice of Motion application dated the 15th September, 2020 unmerited and will dismiss it.

Costs will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 3RD DAY OF NOVEMBER, 2021

CHRISTINE OCHIENG

JUDGE