



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 270 OF 2017

FORMERLY NAKURU ELC CAUSE NO. 62 OF 2012

TITAME OLE SANKEI.....PLAINTIFF/ 1ST RESPONDENT

VERSUS

JOHNSON KIPTUMAI

CHERUIYOT.....DEFENDANT/ 2ND RESPONDENT

AND

KAPSET TEA FACTORY COMPANY LIMITED.....INTERESTED PARTY/ APPLICANT

RULING

A. INTRODUCTION

1. By Notice of Motion dated 29th January, 2020 the Applicant sought for the following orders: -
 - a) That this Honourable court be pleased to discharge the Orders of Injunction issued on 9th July, 2019 restraining the 1st Respondent by himself, agents, employees, or any person acting on his behalf from selling sub-dividing, putting up structures, felling trees or in any manner interfering with the Applicant's property known as Title No. CIS MARA/ OLOLOLUNGA/17055 pending the hearing and determination of the suit.
 - b) That the costs of this Application be provided for.
2. The Application is based on the grounds thereof and the Supporting Affidavit dated 29.1.2020. The applicant avers that it is the lawful registered proprietor of all that parcel of land known as CIS MARA/ OLOLOLUNGA/17055 measuring approx. 89.55 hectares, having purchased the same from NOOYUAT SANKEI and FELIX MAINA SANKEI vide a Sale Agreement dated 26th April, 2018; who were the immediate registered owners of the said land. Subsequent to the sale, the said vendors executed the transfer forms and obtained the Land Control Board Consent before the property was eventually transferred and lawfully registered in the names of the Applicants
3. It is their contention that the orders issued were detrimental to the applicant since they are interfering with their constitutional rights as to ownership, use of property and thus they stand to suffer irreparable loss unless the orders sought herein are granted.
4. They further state that at the time of the said sale transaction they were not aware of the existence of this suit and only became aware of the same when it was served with the orders of this honourable court issued on the 5th July, 2019. The land parcel no. CIS MARA/ OLOLOLUNGA/17055 is among the properties that the defendant obtained an injunction against.
5. It is their assertion that the said interim order of injunction is taking a negative toll on its lawful activities that it has been carrying out in the said property. The said orders were issued in their absence.
6. The Plaintiff/1st Respondent was not opposed to the said Application and therefore did not file any response or written submissions thereto.

7. The 2nd Respondent on the other hand opposed the application. He filed a Replying Affidavit dated 24.02.2020 in response to the Application dated 29.01.2020. It is the Respondent's assertion that the honourable court by granting an order for injunction dated 5th July, 2019, was satisfied with the grounds set in his application dated 24th April, 2018 and 30th October, 2018. He demonstrated to the court that there was a *prima facie* case with a probability of success and stands to suffer irreparable damage that cannot be compensated by an award of damages

8. He did contend that the application herein was solely based on the unmerited assumption that the title to land parcel CIS MARA/ OLOLOLUNGA/17055 was a good title to the land. Occasioning the applicant with the overriding interests to the land known as CIS MARA/ OLOLOLUNGA/17055, which is not the case; the applicant did not carry out due diligence before buying the land.

9. It was his position that CIS MARA/ OLOLOLUNGA/17055 makes up about 14% of the total suit land whose ownership is contested in the suit and that should the orders are discharged on the part of the applicant, then his constitutional rights to ownership and use of land will be greatly infringed and violated.

10. When the matter came up to confirm compliance, the applicant indicated that they had filed their written submissions as directed, however, i have not seen a copy of the same on the court record.

11. I have read and considered the Application and the responses thereto and the submissions by the 2nd Respondent and the various authorities cited and I have taken the same into account in arriving at my decision.

B. DETERMINATION AND ANALYSIS

12. The main issue for determination from the present Application is: -

a) Whether the Interlocutory Injunction issued on 5.07.2019 can be discharged as sought.

A) Whether the Interlocutory Injunction issued on 5.07.2017 can be discharged as sought

13. Order 40 Rule 7 of the Civil Procedure Rules provides that an order for injunction may be discharged, varied or set aside by the court on application by either party dissatisfied by the order.

14. Interlocutory injunctions are meant to preserve the substratum of the suit pending the hearing and determination of the suit. The grant of interlocutory injunctions is not meant to occasion prejudice to any party. In this particular case the Interested Party/ Applicant avers that it is the legal and rightful owner of the land parcel CIS MARA/ OLOLOLUNGA/17055 having bought the same from vendors NOOYUAT SANKEI and FELIX MAINA SANKEI vide a sale agreement dated 26th April 2018 Hence it has a purchaser's interest over the sui land. It is my considered view that should court find that the plaintiff/ Respondent did not deserve the grant of the injunction, the applicants would be able to be compensated by way of damages which in this case can be quantified from the sale agreement as the purchase price from the vendors.

15. Before the grant of the Orders of Injunction in dispute in the present Application; the application was heard and in a ruling delivered on 5th July, 2017, I held that the applicant had established a *prima facie* case with a probability of success warranting the granting of an order of temporary injunction for purposes of preserving the suit property pending the hearing and determination of the case.

16. Despite having the locus to bring the present Application as specified under the Civil Procedure Rules; I wish to state that the Applicant/ Interested Party has not clearly demonstrated why the said order of injunction ought to be discharged.

17. There is no demonstration of fraud of non-disclosure of material facts on the part of the 2nd Respondent at the time of applying for the interim orders of injunction. The Applicant herein only states that it is the rightful and registered owner of the said portion of the suit land being, CIS MARA/ OLOLOLUNGA/17055.

18. It is important to point out that the issue of ownership of the whole of the suit land is at the center of the suit herein; and the same can only finally settled upon the hearing of all the parties herein and evidence being adduced before the question of ownership can be ascertained.

19. The importance, aim and purpose of an interlocutory injunction cannot be understated. An Interlocutory Injunction is a common law remedy which seeks to preserve the suit property pending the hearing and determination of the suit.

20. The important consideration before granting a temporary injunction is the proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold or that a party threatens or intends to remove or dispose the property, the court is in such a situation enjoined to grant a temporary injunction to restrain such acts and preserve the suit property.

21. The upshot of the foregoing is that, I find that the Notice of Motion Application dated 29.01.2020 is not merited and the same is therefore dismissed with costs to the 2nd Respondent. I accordingly order that the Injunction issued on 5th July, 2017 in respect to CIS MARA/ OLOLOLUNGA/17052 – 060, to remain in place pending the hearing and determination of the suit. Further, the parties herein are directed to set the suit for hearing on a priority basis. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MIGORI ON 8TH DAY OF NOVEMBER, 2021.

MOHAMMED N. KULLOW

JUDGE

RULING DELIVERED VIRTUALLY IN PRESENCE OF;-

NO APPEARANCE FOR THE APPLICANT

MR. MUTAI FOR THE INTERESTED PARTY

TOM MAURICE – COURT ASSISTANT