



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C NO. 94 OF 2017

INYASIO MWANGI MBURU - PLAINTIFF/APPLICANT

VS

JANE NYAGUTHIE - RESPONDENT/ DEFENDANT

RULING

1. The Plaintiff filed suit against the Defendant on the 29/9/2016 seeking orders of injunction restraining the Defendant from entering cultivating trespassing into title No. Makuyu/Kambiti Block II/402. The Plaintiff's claim is that he is the legal administrator of the estate of his late brother Alex Nyaga Njeru who owned the suit land. He also sought vacant possession of the suit land and in default eviction to ensue. The Defendant denied the Plaintiff's claim by stating that the suit land measuring 2.9 acres was owned by her late father and the same had been subdivided into 3 portions and distributed to Defendant (0.9 acres), Brother Wilbert Mwangi Muriuki (1.0 acre) and another brother (1.0 acre). That she lives on her 0.9 acres of the suit land and has made developments thereon. She averred that her late brother Wilbert Mwangi Muriuki sold his share of 1.0 acre to Alex Nyaga Njeru. She objected to the Plaintiff claiming the whole of the suit land.

2. On the 5/4/2018 the Applicant filed a Notice of Motion seeking the following orders; -

a) Spent

b) That the Honourable Court be pleased to issue an order of injunction restraining the Defendant/Respondent by herself, her servants, employees and/or agents from entering cultivating cutting down trees demolishing and committing any acts of waste thereon or in any way interfering with the suit property land parcel number Makuyu/Kambiti Block II/402. failing which the premises be protected under the supervision of the officer commanding station Makuyu Police station until this application is heard and determined.

c) That the Honourable Court be pleased to issue an order of injunction restraining the Defendant/Respondent by herself, her servants, employees and/or agents from entering cultivating cutting down trees demolishing and committing any acts of waste thereon or in any way interfering with the suit property land parcel number Makuyu/Kambiti Block II/402. failing which the premises be protected under the supervision of the officer commanding station Makuyu Police station until the suit herein is heard and determined.

d) That the costs of this application be borne by the Defendant/Respondent.

3. The application is based on the grounds that; the Applicant is the legal owner of the suit land; Alex Nyaga Njeru (deceased) bought the whole suit land and had been in exclusive possession and settled his family thereon; the Respondent has unlawfully entered the said suit land and is committing acts of waste by demolishing destroying cultivating and cutting down trees thereon.

4. The application is further supported by the affidavit sworn by the said Applicant where he reiterated the contents of the grounds aforementioned.

5. In resisting the application, the Respondent filed the grounds of opposition on the 24/4/2018 that the application is an abuse of the process of the Court; the prayers sought in the application are similar to the main suit; the application is intended to cause delay in the determination of the suit.

6. Parties elected to canvass the application by way of written submissions which both parties have filed. I have carefully considered the application, rival affidavits and annexures as well as written submissions and now proceed to determine the application.

7. It is now trite law that the conditions of granting interlocutory injunction as stated in the case of *Giella vs Cassman Brown and Co. Ltd (1973) EA 358* are: that firstly, an Applicant must show a prima facie case with a probability of success, secondly an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which would not adequately be compensated by

an award of damages, and thirdly, if the Court is in doubt, it will decide an application on a balance of convenience. The Court of Appeal in **Mbao vs First American Bank of Kenya Ltd & Two Others C.A. No. 39 OF 2002 (2003 eK.L.R)** defined a prima facie case in the following terms;

“A prima facie case in a civil application include but is not confined to a genuine and arguable case. It is a case which, on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.

8. Is there a prima facie case? The Applicant is claiming title to the whole suit as the legal administrator of the estate of Alex Nyaga Njeru, his deceased brother. He avers that the said Alex Nyaga Njeru bought the suit land from one Wilbert Mwangi Muriuki who happens to be deceased as well. The Respondent has stated that the suit land was owned by their father and had been subdivided into three portions and the said Wilbert Mwangi Muriuki, his late brother was allocated 1.0 acre which he sold to the late Alex Nyaga Njeru. The Applicant has not presented to the Court any prima facie evidence to show what size of the suit land his brother had acquired from the said Wilbert Mwangi Muriuki either by way of agreement of sale or a title. I hold that the Applicant has not discharged his duty in establishing a prima facie case.

9. In respect to adequacy of damages as compensation, the Applicant has stated that the Respondent is committing acts of trespass, waste such as cultivation, cutting down trees which activities are capable of being compensated by way of damages. The application falters on this ground as well.

10. If I was in doubt, (for which am not), the balance of convenience still tilts on the application being dismissed. However, I wish to consider the submissions of the Respondent which stated as follows;

“we are saying status quo be maintained until the suit is heard and determined”

In so considering, it is clear from the pleadings that the parties are both in possession of the land. The question for the trial Court is to determine whether or not the Plaintiff is entitled to the whole suit or a part of it. It cannot be determined in this application. Guided by the powers vested upon me under Order 40 rule 1 I grant an order for status quo for a period of 3 months from the date of this ruling within which time the parties will have set the matter for full hearing so that the rights of each party are determined fully. Status quo will mean that none of the parties will engage in acts of destruction of the suit property and all that is growing on it.

11. The Applicant shall meet the costs of the application.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 4TH OCTOBER 2018

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Plaintiff – Absent

Ms Mwangi HB for Gacheru for the Defendant

Irene and Njeri, Court Assistants