



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 24 OF 2020**

**CHRISANTO KINANGA OCHARI.....PLAINTIFF**

**VERSUS**

**JIMSLEY GETENGA OMARI.....1<sup>ST</sup> DEFENDANT**

**RIANTO NELSON SAINA.....2<sup>ND</sup> DEFENDANT**

**DENNIS NJOROGE MAGU.....3<sup>RD</sup> DEFENDANT**

**COUNTY LAND REGISTRAR, KAJIADO.....4<sup>TH</sup> DEFENDANT**

**CHIEF LAND REGISTRAR.....5<sup>TH</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL.....6<sup>TH</sup> DEFENDANT**

**RULING**

What is before Court for determination is the Plaintiff's Notice of Motion application dated the 19<sup>th</sup> May, 2020 where he sought for an order inhibiting the registration of any dealings with his properties namely: Kajiado/ Kaputiei North/30516; 34918; 36722; 37636; 49980; 49981; 49983;49984; 49993; 49994; 49995; 49996; 49997; 49998; 49999; 50000; 50001; 50004; 50005; 50006; 50007; 50010 and 52498 as well as Kajiado/ Mailua/ 4067 including Kajiado/ Kisaju/7940 hereinafter referred to as the 'suit properties', pending the hearing and determination of this suit. Further, that an order of injunction do issue preventing, stopping and or prohibiting the the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants together with their agents including assigns from interfering with the suit properties. He sought for an order directing the 4<sup>th</sup> Defendant to register the order inhibiting the registration of any dealings with the suit properties and for him to furnish Plaintiff with certified copies of Green Card including Transfer forms in respect of the suit properties.

The application is premised on the grounds on the face of it and the supporting affidavit of the Plaintiff CHRISANTO KINANGA OCHARI where he deposes that he is the bona fide registered proprietor and in possession of the suit properties. He explains that in September, 2019 he discovered the loss of all his title documents to the suit properties which he reported to the Kajiado Police Station vide OB No. 28/27/9/2019 and at the Directorate of Criminal Investigations (DCI) Headquarters wherein the matter is still pending investigations. Further, that he has not been able to recover his properties. He claims on 30<sup>th</sup> September, 2019, through his advocates he sought intervention of the 4<sup>th</sup> Defendant to restrict all the titles to the suit properties as well as rectification of the same. Further, the 4<sup>th</sup> Defendant did restrict certain titles and wrote a letter to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants together with a company called TRINITY SURVEYORS notifying them that he will expunge the records in respect to Kajiado/ Kaputiei North/ 34918; 49993; 49994; 49995; 49996; 49997; 49998; 49999; 50000; 50001; 50004; 50005 and 50010. He avers that vide a letter dated the 22<sup>nd</sup> November, 2019, he also sought to be furnished with transfer documents used in effecting changes on land title numbers Kajiado/ Kaputiei North/ 34918; 49993; 49994; 49995; 49996; 49997; 49998; 49999; 50000; 50001; 50004; 50005 and 50010. Further, he also sought to be furnished with Green Cards in respect to the aforementioned parcels of land. He states that vide a letter dated the 13<sup>th</sup> December, 2019, the 4<sup>th</sup> Defendant informed him he could not expunge records in respect to the suit properties on allegations that some of them had been used as securities within lending institutions and directed him to seek redress from court. Further, that the 4<sup>th</sup> Defendant only furnished him with first pages of seven (7) of the Green Cards. He reiterates that being dissatisfied with the 4<sup>th</sup> Defendant's failure to discharge his duties as requested, he prepared an appeal to the 5<sup>th</sup> Defendant who received it on 28<sup>th</sup> January, 2020 and the matter is pending hearing including determination. He further states that the purported transfers allegedly signed by himself have forged signatures. He denies selling nor gifting suit properties to the 1<sup>st</sup> Defendant and insists they were fraudulently transferred through misrepresentation by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. Further, the 3<sup>rd</sup> Defendant's intended transfer in respect to two properties namely Kajiado/ Kaputiei North/ 49995 and 49996 respectively was fraudulent and through a corrupt scheme.

The 1<sup>st</sup> Defendant filed a replying affidavit on 19<sup>th</sup> February, 2021 to oppose the Plaintiff's application. I note on 15<sup>th</sup> February, 2021 the Court declined to extend leave to the 1<sup>st</sup> Defendant to file a replying affidavit and written submissions as initially he had been granted leave

of 21 days on 28<sup>th</sup> September, 2020 and the said Leave was further extended for seven (7) days on 27<sup>th</sup> October, 2020 but he failed to do so. I will hence decline to consider the replying affidavit and written submissions as filed as the same was done without leave.

None of the Defendants filed any affidavits to oppose the Plaintiff's averments. Further, on 28<sup>th</sup> September, 2019, the representative from the Attorney General acting for the 4<sup>th</sup> and 5<sup>th</sup> Defendants, indicated that they did not intend to participate in the instant application.

The application was canvassed by way of written submissions.

### **Analysis and Determination**

Upon consideration of the Plaintiff's Notice of Motion application dated the 19<sup>th</sup> May, 2020 including the supporting affidavit and rivaling submissions, the following are the issues for determination:

- Whether an order of injunction should issue restraining the Defendants from interfering with the Plaintiff's quiet possession and enjoyment of the suit properties pending outcome of the suit.
- Whether an inhibition order should issue and the 4<sup>th</sup> Defendant directed to register the same against the suit properties and furnish Plaintiff with Certified Copies of Green Card including Transfer Forms in respect to the said Properties.

As to whether an order of injunction should issue restraining the Defendants from interfering with the Plaintiff's quiet possession and enjoyment of the suit properties pending outcome of suit. It is not in dispute that the Plaintiff was initially registered as the proprietor of the suit properties. What is in dispute is the Plaintiff's claim that the said properties were fraudulently transferred from his name by the 1<sup>st</sup> to 3<sup>rd</sup> Defendants. The Plaintiff confirmed that this matter was pending investigation both at the Kajiado DCI and at the Chief Land Registrar's office. The Plaintiff in his submissions reiterated his claim and contended that he had established a prima facie case to warrant the orders sought, which was disputed by the 3<sup>rd</sup> Defendant. In line with the principles established in the case of **Giella Vs Cassman Brown (1973) EA 358**, I will proceed to interrogate whether the Plaintiff has established a prima facie case to warrant the orders sought. I note in the supporting affidavit, the Plaintiff averred that he discovered the loss of his title deeds to the suit properties in September, 2019 after the properties had been transferred to the 1<sup>st</sup> to 3<sup>rd</sup> Defendants.

The Plaintiff has however not explained who is now registered as the proprietor of each of the parcels of land. Further, he denies selling or gifting the said parcels of land to the Defendants nor any third party. He insists the 1<sup>st</sup> and 2<sup>nd</sup> Defendants acquired the properties fraudulently. From the gaps in the Plaintiff's supporting affidavit, I opine that these are issues which require proper interrogation as well as viva voce evidence to enable the court make a proper determination of the same. However, from the averments herein which were not controverted by the Defendants, noting that the Plaintiff was the initial registered proprietor of the suit properties, at this juncture, I find that he has established a prima facie case to warrant the orders sought.

As to whether the Plaintiff will suffer irreparable harm that cannot be compensated by way of damages. I note the Plaintiff was the initial registered proprietor of the suit properties which have since been transferred to the 1<sup>st</sup> to 3<sup>rd</sup> Defendants. I further note that the Plaintiff is still in possession of the said parcels of land and is apprehensive the same can be transferred to third parties. In the case of **Case of Nguruman Ltd. Vs. Jan Bonde Nielsen CA No. 77 of 2012**, it was held that '**...the Plaintiff must establish that he 'might otherwise' suffer irreparable injury which cannot be adequately compensated remedied by damages in the absence of an injunction, this is a threshold requirement and the burden is on the Plaintiff to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Plaintiff. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot 'adequately' be compensated by an award of damages.'**

In relying on the above cited decision and based on the circumstances at hand, I find that the Plaintiff's alleged injuries are not speculative as he has demonstrated the harm he will suffer if the injunctive orders are denied.

As for balance of convenience, from the evidence presented by the parties, I find that the balance tilts in favour of the Plaintiff who was the initial registered proprietor of the suit properties, which have since been transferred to the 1<sup>st</sup> to 3<sup>rd</sup> Defendants.

However, since it is not clear who are the current registered proprietors of the suit properties, I am of the view that it is pertinent to preserve the substratum of the suit and will direct that the obtaining status quo be maintained.

As to whether an inhibition order should issue and the 4<sup>th</sup> Defendant directed to register the same against the suit properties, pending the hearing and determination of this suit. Since I have already held that the substratum of the suit herein should be preserved pending the outcome of the suit; while relying on Order 40 of the Civil Procedure Rules, and section 68 (1) of the Land Registration Act including associating myself with the case of **Dorcas Muthoni & 2 others V Michael Ireri Ngari (2016) eKLR** where the court granted an order of inhibition to preserve a suit land, I find that it would be pertinent if an inhibition order was indeed registered against the suit properties so as to preserve them

Further, I note the Plaintiff claimed he sought from the 4<sup>th</sup> Defendant certified copies of Green Card and Transfer Forms in respect to the suit properties but he was furnished with only a few of them. It is my considered view that since the 4<sup>th</sup> Defendant is the custodian of the said documents, and further since ownership of the suit properties is in dispute herein, it would be pertinent for him to furnish the Plaintiff with the said documents to enable him confirm how the transfers were effected to the 1<sup>st</sup> to 3<sup>rd</sup> Defendants.

It is against the foregoing that I find the application dated the 19<sup>th</sup> May, 2020 merited and will allow it in the following terms:

i. The Land Registrar, Kajiado be and is hereby directed to register an inhibition order against land parcel numbers Kajiado/ Kaputiei North/30516; 34918; 36722; 37636; 49980; 49981; 49983;49984; 49993; 49994; 49995; 49996; 49997; 49998; 49999; 50000; 50001; 50004; 50005; 50006; 50007; 50010 and 52498 as well as Kajiado/ Mailua/ 4067 including Kajiado/ Kisaju/7940 pending the hearing and determination of this suit.

ii. The Land Registrar, Kajiado be and is hereby directed to furnish the Plaintiff with certified copies of Green Card and Transfer forms in respect to land parcel numbers Kajiado/ Kaputiei North/30516; 34918; 36722; 37636; 49980; 49981; 49983;49984; 49993; 49994; 49995; 49996; 49997; 49998; 49999; 50000; 50001; 50004; 50005; 50006; 50007; 50010 and 52498 as well as Kajiado/ Mailua/ 4067 including Kajiado/ Kisaju/7940 within 90 days from the date hereof.

iii. Costs will be in the cause.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 10TH DAY OF MAY, 2021**

**CHRISTINE OCHIENG**

**JUDGE**