



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC NO. 23 OF 2020

MUMEITA OLE NANTEYA.....APPLICANT

-VERSUS-

ISAIAH LEMASHON OLE TAYEK.....1ST RESPONDENT

DISTRICT LAND REGISTRAR, NAROK.....2ND RESPONDENT

RULING

Before me is a Notice of Motion dated 18th September, 2020 in which the Applicant is seeking the following Order:-

1. Spent
2. Spent
3. Pending the hearing and determination of this suit, this Honourable court be pleased to make an Order directed at the District Land Registrar Narok North/South to forbid all dealings or further registration of any entries in the register over CISMARA/MAJI MOTO/1872 and or evicting the Applicant from a parcel of land otherwise known as CISMARA/MAJI MOTO/1872.
4. That this Honourable court makes such other orders or further relief that it may deem just and expedient to grant for the justice to be met in the circumstance.
5. Costs of this application be borne by the Defendant/Respondent.

The application is premised on the grounds that the Applicant is a bona fide member of Maji Moto Group Ranch and was allotted land parcel number 1872 upon demarcation of the group ranch which was later registered as CISMARA/MAJI MOTO/1872. The application is supported by the affidavit of the Applicant sworn on 18th September, 2020 in which he deposes that upon demarcation of Maji Moto Group Ranch in which he was a member, he was allotted parcel number 1872. That he later learnt that the parcel of land allotted to him that is parcel number 1872 and later registered as CISMARA/MAJI MOTO/1872 was now registered in the name of the 1st Respondent and a Title Deed issued. The Applicant avers that there are no supportive documents or records informing the 2nd Respondent to issue the 1st Defendant with Title Deed as regards the suit land. He avers that he was shown the suit land by the Adjudication committee and he took possession and has since been in quiet and peaceful occupation of the suit land since. That the 1st Respondent was allocated parcel number 1755 duly registered in his name and further that no member was allocated two shares in the group ranch. The Applicant has attached copies of the Register and Area List and a copy of the search with respect to the suit land and avers that this application has high chances of the success and the same should be allowed.

The application is opposed by the Replying Affidavit of the 1st Respondent sworn on 22nd October, 2020 in which he avers that he is the registered owner of the suit land and has attached a copy of the Title Deed. He further avers that the Applicant has not deposed that the title deed was procured illegally through fraud deceit or malpractice. He avers that he is duly registered as member number 1743 in Maji Moto Group Ranch. That the Applicant's exhibit marked 'MM-1 a & b' is not authentic and the same ought to have been received and stamped by the District Land Registrar. The Respondent contends that he is not to blame for being registered as owner of CISMARA/MAJIMOTO/1872 as the officials of Maji Moto Group Ranch deemed it appropriate to allocate to him the land and issue him with a Title Deed. He also avers that the Applicant is a member of Naroosura Group Ranch and that he has lived there all his life. He has attached a copy of Naroosura Group Ranch Members' list in which the Applicant is listed as member number 5471. He contends that adjudication records do not confer ownership or proprietorship of any particular parcel to any member but only a Transfer form is what informs the District land Registrar who the transferee is and for those reasons the Application should be dismissed with costs and interim orders discharged.

I have analysed the Notice of Motion Application, the Replying Affidavit and Submissions filed by Counsel and the issue for determination at this juncture is whether the Applicant is entitled to the Orders of Injunction.

Order 40, rule 1 of the Civil Procedure Rules provides a basis upon which a temporary injunction may issue and states ‘*Where in any suit it is proved by affidavit or otherwise— (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.*’

In an application for an interlocutory injunction the onus is on the applicant to satisfy the court that it should grant an Injunction. The jurisdiction to grant an Injunction may be exercised if it is just and convenient to do so. In the case of *Giella v Cassman Brown & Co. Ltd.*, the court set out the principles for interlocutory injunctions which are:-

- a) The Plaintiff must establish that he has a prima facie case with high chances of success;
- b) That the Plaintiff would suffer irreparable loss that cannot be compensated by an award of damages;
- c) If the court is in doubt, it will decide on a balance of convenience.

In addition, an injunction is a discretionary remedy. As was held in *Kenleb Cons Ltd v New Gatitu Service Station Ltd & another.* “to succeed in an application for injunction, an applicant must not only make a full and frank disclosure of all relevant facts to the just determination of the application but must also show he has a right legal or equitable, which requires protection by injunction.”

The Plaintiff has stated that he is the bona fide owner of parcel number 1872 and has attached a register confirming the same. The register as well indicates the Respondent as owner of parcel number 1755. The said copy of area list is signed by the Chairman, Secretary and Treasurer of the group ranch, the said copy also bears the stamp of the District Land Adjudication Settlement Officer and the stamp of Maji Moto Group Ranch. On the other hand, the Respondent has not demonstrated how he acquired suit land parcel number 1872 to the extent of being issued with a Title Deed. The question that now begs is whether the Applicant has established a prima facie case with high chances of success. Based on the above, I am satisfied that the Applicant has established a prima facie case owing to the fact that he has demonstrated how suit land was allocated to him and that the Respondent in paragraph 17 of his Replying Affidavit absolves himself as to how he acquired the suit land and instead implores on the Applicant to direct his grievances on the 2nd Respondent. I believe that for the 2nd Respondent to grant title to the 1st Respondent, the 1st Respondent, prompted the 2nd Respondent through filing of necessary documents as regards transfer of land.

On whether the applicant would suffer irreparable loss that cannot be awarded by damages, I do agree with Counsel for the Applicant where he has cited the case of Henry Kowero Ogoye & Anor v Sammy Obere & Another (2010) eKLR that one cannot violate another citizen’s rights only at the pain of damages. On a balance of convenience, I do find that the Applicant has satisfied this court as to warrant an injunctive order against the Respondents. I hereby allow the Application in terms of prayer number 3. On the issue of costs, I direct that each party to bear its own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK ON THIS 16TH DAY JUNE, 2021.

Mohamed N. Kullow

Judge

16/6/2021

In the presence of:-

CA:Chuma

Ms Karuga holding brief for Mbugua for the 1st Defendant

N/A for the Plaintiff/Applicant