



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. E007 OF 2020

JOYCE WANGECHI RUGA (*Suing as the Personal Representative of the*

Estate of Ruga Gituku – Deceased*).....**PLAINTIFF*

VERSUS

PHILIP OLE SRONKA.....1ST DEFENDANT****

HANNAH GATHONI RUGA.....2ND DEFENDANT****

MWENDA THURANIRA T/A MY SPACE PROPERTIES.....3RD DEFENDANT****

CHIEF LAND REGISTRAR KAJIADO..... **4TH DEFENDANT**

CHAIRPERSON ISINYA SUB COUNTY

LAND CONTROL BOARD.....5TH DEFENDANT****

AND

KENYA ELECTRICITY TRANSMISSION

COMPANY LIMITED.....INTERESTED PARTY****

RULING

What is before Court for determination is the Plaintiff’s Notice of Motion application dated the 16th October, 2020 brought pursuant to Article 40 of the Constitution, Sections 1A, 1B and 3A of the Civil Procedure Act; Order 40 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules. The Plaintiff seeks for interlocutory injunction against the Defendants and their representatives, in respect to land parcel numbers Kajiado/Kaputiei North/107762; 107763; 107764; 107765 including any resultant subdivisions therefrom, pending the outcome of this suit. She further seeks for interlocutory injunction against the Defendants and their representatives, in respect to land parcel numbers Kajiado/Kaputiei North/2866; 2867; 2868; 2869; 2870; 2871; 2872; 2874; 2876; 2877; 2878; 2879; 2880; 2881; 2882; 2883; 31840; 31839; 31838; 31832; 31836; 31835; 31834; 31833; 31848; 31849; 31850; 31851; 31852; 31853; 31886; 31885; 31883; 31884; 31887; 31876; 31875; 31874; 31873; 31872; 31870; 31869; 31868; 31867; 31864; 31866; 31863; 31865; 31892; 31891; 31890; 31889; 31888; 31882; 31881; 31879; 31878; 31871; 31870; 31861; 31860; 31859; 31858; 31857; 31856; 31855; 31854; 31847; 31846; 31845; 31844; 31843; 31842; 31841 and 32028, pending the outcome of this suit. She also seeks for the Chief Land Registrar, Kajiado to furnish her with certified copies of various documents deposited with Land Registrar Kajiado South as pertains to land parcel number Kajiado/Kaputiei North/1076; 107762; 107763; 107764 and 107765 to wit Land Control Board Application form for consolidation of title numbers Kajiado/Kaputiei North/2866; 2867; 2868; 2869; 2870; 2871; 2872; 2874; 2876; 2877; 2878; 2879; 2880; 2881; 2882; 2883; 31840; 31839; 31838; 31832; 31836; 31835; 31834; 31833; 31848; 31849; 31850; 31851; 31852; 31853; 31886; 31885; 31883; 31884; 31887; 31876; 31875; 31874; 31873; 31872; 31870; 31869; 31868; 31867; 31864; 31866; 31863; 31865; 31892; 31891; 31890; 31889; 31888; 31882; 31881; 31879; 31878; 31871; 31870; 31861; 31860; 31859; 31858; 31857; 31856; 31855; 31854; 31847; 31846; 31845; 31844; 31843; 31842; 31841 and 32028 as well as Letter of Consent for consolidation; certified copy of receipt; certified copy of consent for subdivision of Kajiado/Kaputiei North/1076; Certified copy Letter of consent for subdivision of Kajiado/Kaputiei North/1076 into 107762; 107763; 107764 and 107765; Copies of the Mutation over Kajiado/Kaputiei North/1076; Certified Copies of Green Card for land parcel numbers Kajiado/Kaputiei North/107762; 107763; 107764 and 107765; and Certified Copy of Green Card for KJD/Kaputiei North/ 1076. She further sought for an order for rectification of title or register in respect to land parcel numbers: Kajiado/Kaputiei North/2866; 2867; 2868; 2869; 2870; 2871; 2872; 2874; 2876; 2877; 2878; 2879; 2880; 2881; 2882; 2883; 31840; 31839; 31838; 31832; 31836; 31835; 31834; 31833; 31848; 31849; 31850; 31851; 31852; 31853; 31886; 31885; 31883; 31884; 31887; 31876; 31875; 31874; 31873; 31872; 31870; 31869; 31868; 31867; 31864; 31866; 31863; 31865; 31892; 31891; 31890; 31889; 31888; 31882; 31881; 31879; 31878; 31871; 31870; 31861; 31860; 31859;

31858; 31857; 31856; 31855; 31854; 31847; 31846; 31845; 31844; 31843; 3184; 31841 and 32028.

The application is premised on the summarized grounds that the 1st and 2nd Respondents in collusion with the 4th and 5th Respondents have acquired another title over land parcel number KJ/Kaputiei North/ 1076 which was closed on subdivision on 11th July, 1988 upon subdivision of title numbers Kajiado/Kaputiei North/ 1157; 1158; 1159; 1160; 1161; 1162; 1163; 1164; 1165 and 1166 respectively. Further, at the time of the deceased demise, he was the registered owner of all parcels of land known as Kajiado/Kaputiei North/2866; 2867; 2868; 2869; 2870; 2871; 2872; 2874; 2876; 2877; 2878; 2879; 2880; 2881; 2882; 2883; 31840; 31839; 31838; 31832; 31836; 31835; 31834; 31833; 31848; 31849; 31850; 31851; 31852; 31853; 31886; 31885; 31883; 31884; 31887; 31876; 31875; 31874; 31873; 31872; 31870; 31869; 31868; 31867; 31864; 31866; 31863; 31865; 31892; 31891; 31890; 31889; 31888; 31882; 31881; 31879; 31878; 31871; 31870; 31861; 31860; 31859; 31858; 31857; 31856; 31855; 31854; 31847; 31846; 31845; 31844; 31843; 3184; 31841 and 32028. She contends that the Respondents have purported to subdivide a non-existent parcel of land Kajiado/Kaputiei North/ 1076 which was closed on subdivision on 11th July, 1988 into four parcels namely Kajiado/Kaputiei North/ 107762; 107763; 107764 and 107765 respectively. Further, the said parcels of land have now been subdivided and the Respondents are offering the said resultant subdivisions for sale to unsuspecting members of the public yet they know they do not possess a good title. She reiterates that she has established a prima facie case with a high probability of success and the balance of convenience tilts in her favour. Further, the Respondents will not suffer any prejudice if the orders sought are granted.

The Application is supported by the affidavit of JOYCE WANGECHI RUGA who reiterates her claim above.

The 1st Defendant opposed the application and filed a replying affidavit where he deposes that neither the Plaintiff nor the deceased has been the owner of land parcel number Kajiado/ Kaputiei North/1076. He insists he is the absolute owner of land parcel number Kajiado/ Kaputiei North/1076. Further, he denies transferring the said parcel of land to the deceased by executing a Transfer Form dated the 10th February, 1988 and contends that the transfer documents with the deceased relating to this transaction were fraudulent. He claims he has always had custody of the Certificate of Title in respect to land parcel number Kajiado/ Kaputiei North/ 1076 and had never surrendered the said title for the suit land to anyone. He explains that in 1985, the deceased had agreed to pay for him a loan of Kshs. 52, 000 with the Agricultural Finance Corporation (AFC) and gave him a copy of the title for Kajiado/ Kaputiei North/ 1076. Further, he later learnt that the deceased had cunningly apportioned himself fifty (50) acres of land therefrom and lodged a caution on the said land as well as filed a complaint with the Kajiado Land Dispute Tribunal being TL/282/011 and the Division of Criminal Investigation DCIO Kitengela. He avers that the Land Dispute Tribunal ruled in the deceased's favour but the said decision was quashed vide Machakos Judicial Review Miscellaneous Application Number 58 of 2012. He states that the deceased was charged for forgery vide Mavoko Principal Magistrate's Court Criminal Case No. 525 of 2012 but he filed a constitutional Petition No. 3 of 2017 to frustrate and obliterate the criminal case against him. He further insists that the purported Sale Agreement dated 8th May, 1987 for the sale of the fifty (50) acres of land to the deceased is a fraud as well as illegal. He disputes the sub-division undertaken on Kajiado/ Kaputiei North/ 1076 by the deceased and insists he is a stranger to the relationship between the deceased and Interested Party. He confirms subdividing Kajiado/ Kaputiei North/1076. Further, that as agreed with the deceased on 23rd February, 2017, he offered fifty (50) acres of land to the 1st Defendant. He was aware of the complaints made against him by the Applicant to the Deputy County Commissioner – Isinya and Land Registrar, and avers that after deliberations, the same were dismissed for being baseless. He contends that he is not a party to the succession proceedings in respect to the deceased estate. Further, that the Applicant lodged complaints against them with the Director of Criminal Investigations, Kajiado but the file was closed after the DPP indicated to him that there was no offence to charge them with. He reiterates that he is the bona fide registered owner of all that land known as Kajiado/ Kaputiei North/ 1076, while the Plaintiff is a habitual litigant. He insists he is likely to suffer irreparable damage and the application should be dismissed.

The 2nd Defendant opposed the application by filing a replying affidavit where she confirms being one of the administrators to the estate of the late RUGA GITUKU. She claims the offer the Interested Party gave to the deceased in respect to land parcel number Kajiado/Kaputiei North/ 31847 was rejected vide the deceased's letter dated the 23rd August, 2012. She insists all the properties that were registered in the name of the deceased were shared out to the Applicant for purposes of filing the succession cause. Further, she is unable to confirm if the said properties emanated from Kajiado/Kaputiei North/1076 as she never participated in their acquisition. She denies ever appearing at any Land Control Board together with the 1st Respondent. She further denies being summoned to any office. She confirms that there is a pending succession cause in the High Court Family Division being 189 of 2019 but denies having fraudulently been involved in illegal subdivision of the deceased estate. She reiterates that the listed properties in paragraphs 17, 18 and 19 in the supporting affidavit are the same properties listed in the aforementioned succession cause and are different from what is alleged to have been fraudulently subdivided herein. She insists this application is an abuse of the court process as there is a similar application pending in the succession court.

The Interested Party filed a replying affidavit sworn by Evan Nzangi its Legal Officer where he deposes that the said Interested Party negotiated with the deceased and reached an agreement to purchase land parcel numbers Kajiado/ Kaputiei North/ 31841; 31842; 31843; 31844; 31845; 31846; 31847; 31854; 31855; 31856; 31857; 31858; 31859; 31860; 31861; 31871; 31878; 31879; 31880; 31881; 31882; 31887; 31888; 31889; 31890; 31891; 31892 and 32028 respectively, for a total consideration of Kshs. 13, 312, 500. He confirms the transfer of land in respect to the aforementioned parcels of land has been registered as the Interested Party paid Kshs. 277,820 as stamp duty to that effect. Further, that the certificates of title for 26 parcels were issued on 13th July, 2013 with the remaining two parcels issued on 8th August, 2013 and 13th January, 2021 respectively. He reiterates that the Interested Party took possession of the said suit properties.

The Plaintiff filed a further affidavit disputing the averments in the replying affidavits and reiterated her claim.

The application was canvassed by way of written submissions

Analysis and Determination

Upon consideration of the Notice of Motion dated the 16th October, 2020 including the respective affidavits and rivaling submissions, I note that the Plaintiff sought for various prayers including production of documents and rectification of title. It is my considered view that prayers for rectification of title cannot be granted at this interlocutory stage. Further, for the request of documents from the Chief Land Registrar,

there are clearly outlined legal provisions guiding production of documents in Kenya, which the Plaintiff ought to adhere to, hence I will not deal with this prayer.

At this juncture the only issue for determination is whether the Plaintiff is entitled to the orders for interlocutory injunction in respect to the aforementioned parcels of land pending the outcome of this suit.

The Plaintiff in her submissions reiterated her claim and contended that this court has jurisdiction to deal with this suit. Further, that she has *locus standi* to file this suit. She averred that she is deserving of orders of interlocutory injunction. To buttress her averments, she relied on the following decisions: **Salome Wambui Njau (suing as administratrix of the estate of Peter Kiguru Njuguna – deceased) Vs Caroline Wangui Kiguru (2013) eKLR**; **Nancy Jepkurui Talai & Another V Sudi Oscar Kipchumba (2020) eKLR**; **Beatrice Wambui Kiarie & Others V Tabitha Wanjiku Nganga & 9 Others (2018) eKLR**; and **Paul Gitonga Wanjau V Gathuthi Tea Factory Company Ltd & 2 Others (2016) eKLR**.

The 1st Defendant in his submissions relied on the averments in his replying affidavit and contended that this suit has no basis in law and should be dismissed or struck out. Further, that the Plaintiff has not established a prima facie case to warrant the orders sought. To buttress his averments, he has relied on the following decisions: **Giella Vs Cassman Brown (1973) EA 358**; **Mrao Ltd Vs The First American Bank of Kenya Limited & 2 Others (2003) eKLR 125**; **Joseph Komen Somek V Patrick Kennedy Suter (2018) eKLR**; and **Peter Njoroge Nganga V Kenya Reinsurance Corporation Limited & Others (2017) eKLR**.

The 2nd Defendant in her submissions, insist the Plaintiff has no *locus standi* to file this suit as it is sub judice. She contended that the Plaintiff is not entitled to the injunctive orders sought. To support her arguments, she relied on the following decisions: **In re Estate of Mohammed Makau (Deceased) (2019) eKLR**; **In re Estate of Makokha Idris Khasabuli (Deceased) (2019) eKLR**; **Kenya Bankers Association V Kenya Revenue Authority (2019) eKLR** and **Bruce Joseph Bockle V Coquero Limited (2014) eKLR**.

The Interested Party in its submissions insist this court has jurisdiction to hear and determine this matter. It supports the Plaintiff's prayer for an injunction. To buttress its arguments, it relied on the following decisions: **Samuel Kamau Macharia & Another V Kenya Commercial Bank & 2 Others (2012) eKLR**; **Giella Vs Cassman Brown (1973) EA 358**; **Paul Gitonga Wanjau V Gathuthi Tea Factory Company Ltd & 2 Others (2016) eKLR**; **American Cynamid Co. Vs Ethicom Limited (1975) A AER 504**; and **Mrao Ltd Vs The First American Bank of Kenya Limited & 2 Others (2003) eKLR 125**.

In line with the principles established in the case of **Giella Vs Cassman Brown (1973) EA 358** I will proceed to analyze whether the Plaintiff has established a prima facie case to warrant the orders sought by relying on the definition of a prima facie case as espoused in the case of **Mrao Ltd Vs the First American Bank of Kenya Limited & 2 Others (2003) eKLR 125**.

It is the Plaintiff's claim that the 1st and 2nd Defendants in collusion with the 4th and 5th Defendants have acquired another title over land parcel number KJD/Kaputiei North/1076 which was closed on subdivision on 11th July, 1988 upon subdivision of title numbers Kajiado/Kaputiei North/1157; 1158; 1159; 1160; 1161; 1162; 1163; 1164; 1165 and 1166 respectively. The Plaintiff and the 2nd Defendant are administrators to the deceased estate. The Defendants insist the Plaintiff has no *locus standi* to deal with this suit. From an analysis of the pleadings filed herein, since there are other parties sued who are not beneficiaries of the deceased estate, with one of the issues raised by the Plaintiff that the co administrator has colluded with the 1st Defendant to interfere with one of the suit parcels, it is my considered view that this court has to balance the scales of justice so that justice is seen to be done. In the circumstance, I find that the Plaintiff indeed has *locus standi* to deal with this suit. The 1st Defendant insists he has always been the absolute proprietor of land parcel number Kajiado/Kaputiei North/1076 and had the original title in his custody. He however does not deny engaging in various transactions with the deceased. The Interested Party has also produced twenty eight (28) Certificates of Title to confirm it bought certain resultant subdivisions from the deceased. To my mind the issues being raised by the respective parties cannot be determined at this juncture but only once viva voce is adduced. However, from the annexures herein and averments of the Plaintiff, I find that she has indeed established a prima facie case with a probability of success. Be that as it may, since there is a related succession cause in respect to the deceased estate, which parties have not confirmed its current position, and further, it is not clear whether some of the parcels have been transferred to third parties, I will not grant the orders as sought but will direct that the Land Registrar, Kajiado to register an inhibition order against all those parcels of land to wit: Kajiado/Kaputiei North/107762; 107763; 107764; 107765 including any resultant subdivisions therefrom as well Kajiado/Kaputiei North/2866; 2867; 2868; 2869; 2870; 2871; 2872; 2874; 2876; 2877; 2878; 2879; 2880; 2881; 2882; 2883; 31840; 31839; 31838; 31832; 31836; 31835; 31834; 31833; 31848; 31849; 31850; 31851; 31852; 31853; 31886; 31885; 31883; 31884; 31887; 31876; 31875; 31874; 31873; 31872; 31870; 31869; 31868; 31867; 31864; 31866; 31863; 31865; 31892; 31891; 31890; 31889; 31888; 31882; 31881; 31879; 31878; 31871; 31870; 31861; 31860; 31859; 31858; 31857; 31856; 31855; 31854; 31847; 31846; 31845; 31844; 31843; 3184; 31841 and 32028, pending the outcome of this suit.

Costs of this application will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 20TH DAY OF SEPTEMBER, 2021

CHRISTINE OCHIENG

JUDGE