



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 62 OF 2020**

**PETER DAMA MEELI.....PLAINTIFF**

**VERSUS**

**SIMON MOINKET MEELI.....DEFENDANT**

**RULING**

What is before court for determination is the Plaintiff's Notice of Motion dated the 16<sup>th</sup> September, 2020 brought to Section 3A, 63 (c) and (e) of the Civil Procedure Act as well as Order 40 Rule (1) (a) and (b) including Order 51 Rule (1) of the Civil Procedure Rules. The Plaintiff seeks for a temporary injunction against the Defendant, his agents or servants in respect to land parcel number Kajiado/Kaputiei North/7876 hereinafter referred to as the 'suit land' pending the outcome of the suit. The application is premised on the grounds on the face of it and the supporting affidavit of PETER DAMA MEELI where he avers that he is one of the administrators of the estate of Richard Moinket Ole Meeli who died on 17<sup>th</sup> September, 2011. He claims to be the beneficial owner of the suit land which the Respondent has trespassed upon. He explains that together with other administrators, they applied for confirmation of the Grant to their late father's estate vide Kajiado HC Succession Cause No. 314 of 2013 and the Defendant protested against the said confirmation claiming he is the owner of the suit land. He confirms that the court gave its Ruling and directed the suit land to revert back to the deceased estate. Further, partial confirmation was done leaving out the suit land. He contends that the Defendant is in the process of transacting with the suit land to his detriment.

The Defendant opposed the application by filing a replying affidavit where he deposes that he is one of the administrators to the estate of Richard Moinket Meeli together with the Applicant. He claims he is the beneficial owner of the suit land having bought the Applicant's share of their father's estate in the year 2000 and he paid the full purchase price of Kshs. 5, 120,000/=. Further, that the Applicant was paid an additional Kshs. 300,000/= along with the final balance of Kshs. 1,047,000/=. He explains that the purchase price was in the form of cash, cattle, goats and sheep which he paid over a period of time in the full presence of the deceased including eight members of the family. He insists he took possession of the suit land and has been therein for over a decade. Further, he uses the suit land for purposes of rearing livestock since he took possession exclusively to date. He avers that the process of transferring the land to him commenced but stalled as he was not personally available. He states that the Applicant has no authority to institute legal proceedings in this court over the suit land for he has no proprietary rights over it. He deposes that on 10<sup>th</sup> June, 2014, the members of the family mediated and it was resolved that he was to receive ninety (90) acres from the suit land while the Applicant got thirty eight (38) acres, which decision he declined. He admits filing a protest in the succession cause No. 44 of 2017 where the court directed that the suit land reverts back to the deceased estate. Further, that on 12<sup>th</sup> August, 2018, the family members convened again and maintained their earlier resolution that he retains ninety (90) acres from suit land while the Applicant gets thirty eight (38) acres. He reiterates that the aforementioned succession cause is pending over distribution of suit land and unless the same is dispensed with, the instant application is frivolous, unmeritorious as well as fatally defective.

The application was canvassed by way of written submissions.

**Analysis and Determination**

Upon consideration of the Notice of Motion application dated the 16<sup>th</sup> September, 2020 including the respective affidavits and rivaling submissions, the only issue for determination is whether the Plaintiff is entitled to orders of interlocutory injunction in respect to the suit land pending the determination of this suit.

The Plaintiff in his submissions reiterated his claim and insists he deserves to be granted the prayers sought as the Respondent has trespassed on the suit land. To support his argument, he has relied on the case of **Giella Vs Cassman Brown & Company (1973) EA 358**.

The Defendant in his submissions reiterates his averments in the replying affidavit and insists the application should be dismissed for material non-disclosure as the Plaintiff sold him the suit land and he took possession thereon. He contends that the Plaintiff has not met the threshold set for granting an injunction. To support his arguments, he has relied on the following decisions: **Kenleb Cons Ltd V New Gatitu Service Station & Another (1990) eKLR; Aviation & Airport Services Workers Union (K) V Kenya Airport Authority & Another (2014) eKLR; Simon Mwaniki Miru (Suing as the legal representative of the estate of Miru Kamwende – Deceased) V Esther Njoki Muriuki (2015) eKLR; Samwel Njehia Gitau V Joyce Wanjiku (2014) eKLR; and Satya Bhama Gandhi V Director of Public Prosecutions & 3 Others (2018) eKLR**.

In line with the principles established in the case of **Giella Vs Cassman Brown & Company (1973) EA 358** as well as the definition of a prima facie case as stated in the case of **Mrao Ltd Vs First American Bank of Kenya & 2 Others (2003) KLR 125**, I will proceed to decipher whether the Plaintiff has established a prima facie case with probability of success at the trial.

The Plaintiff claims he is the beneficial owner of the suit land which the Defendant has trespassed upon. He explains that he is one of the administrators of the estate of Richard Moinket Ole Meeli and together with other administrators, they applied for confirmation of the Grant to their late father's estate vide Kajiado HC Succession Cause No. 314 of 2013 wherein the Defendant protested against the said

confirmation claiming he is the owner of the suit land. Further, the court in its Ruling directed the suit land to revert back to the deceased estate. The Defendant insists he purchased the suit land from the Plaintiff and paid the full purchase price. He contends that the deceased was aware of the transaction but the transfer was not effected in his favour as he was unavailable. He contends that he took possession of the suit land after purchase and has been thereon for a decade. I note no party has a certificate of title in respect of the suit land. Further, the distribution of the said land is still pending in the Kajiado High Court Succession Cause No. 314 of 2013. The Plaintiff claims the Defendant intends to deal with the suit land to his detriment but has not demonstrated this. I note the Plaintiff has not denied that the Defendant has been in possession of the suit land for over a decade.

In the case of **Martha Cherugut Rutoh v Kimibei A. Rutoh & 2 others [2018] eKLR** the Learned Judge while dealing with an application for injunction observed that: **‘A further test for the grant of an injunction has emerged from the approach adopted by Ojwang J (as he then was) in the case of Amir Suleiman V Amboseli Resort Limited (2004) eKLR when in recognizing that “the law has always kept growing to greater levels of refinement to cover new situations not foreseen before” relied on the English case of Films Rover International 1986 3 All ER 772 where the court stated as follows: “A fundamental principle is that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been wrong.”**

Based on the facts as presented, it is my considered view that the Plaintiff does not own the suit land but this forms part of his father’s estate. I opine that the instant application is premature and the issues raised herein are best determined in the aforementioned succession cause first. In the circumstances while associating myself with the decisions cited above, I find that the Plaintiff has not established a prima facie case to warrant the orders of temporary injunction sought as against the Defendant. Further, in relying on the Case of **Nguruman Ltd. Vs. Jan Bonde Nielsen CA No. 77 of 2012**, since the Plaintiff has not established a prima facie case, I will not proceed to decide on the other two limbs on injunction.

It is against the foregoing that I find the Plaintiff’s Notice of Motion dated the 16<sup>th</sup> September, 2020 unmerited and will proceed to dismiss it.

Costs will be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 27<sup>TH</sup> DAY OF OCTOBER, 2021**

**CHRISTINE OCHIENG**

**JUDGE**