



REPUBLIC OF KENYA  
IN THE ENVIRONMENT & LAND COURT  
AT KAJIADO

ELC CAUSE NO. E029 OF 2021

SAMSON GETUI OBAE.....1<sup>ST</sup> PLAINTIFF

MARY NYANCHAMA GETUI.....2<sup>ND</sup> PLAINTIFF

-VERSUS-

JASON NYAATA OMBASO.....1<sup>ST</sup> DEFENDANT

FRANCIS MWENDA MUNENE.....2<sup>ND</sup> DEFENDANT

COUNTY LAND REGISTRAR, NGONG.....3<sup>RD</sup> DEFENDANT

RULING

This ruling is on the application dated 3<sup>rd</sup> May, 2021. The application which is by the plaintiffs is under **Sections 1A, 1B, 3A, and 63 (e)** of the **Civil Procedure Act, Order 40 Rules 1, 2 and 3, Order 51 Rule 1 Civil Procedure Rules, Article 159 (2) (d)** of the **Constitution** and all the enabling provisions of law.

In essence, the application seeks to restrain the Defendants or anybody acting on their behalf from entering, selling, taking possession, transferring or in any other way interfering with the Plaintiffs' quiet possession of the suit land known as **L.R. NGONG/NGONG/9022 AND L.R. NO. NGONG/NGONG/9023**.

The grounds for seeking the above order are that;

Firstly, the Applicants own the suit land having bought the same from Evanson Muigu Mugunyu and Margaret Wanjiru Muiruri in the year 1991.

Secondly, the applicants are in occupation of the suit land.

Thirdly, the first Defendant got fraudulently registered as the proprietor of the suit land without the plaintiffs knowledge and purported to sell it to the second defendant.

Finally, the Applicants still possesses the original title deeds to the suit land which have never been lawfully revoked as the Applicants have never sold their land to anybody.

The application is supported by an affidavit sworn by the said Plaintiffs.

Annexed to the affidavit are four annexures which include;

- a. Copies of title deed for the two suit parcels both dated 3/9/1991.
- b. Copies of transfer documents from the original owners to the Applicants.
- c. Copies of the register for the two suit parcels.
- d. Copies of statements made to the police on discovery of the fraudulent transfer.

The application is opposed by the second and third respondents who have filed grounds of opposition.

The second defendant's grounds are that the notice of motion and the supporting affidavit are at variance with the documents in support thereto thus the prayers sought cannot be granted.

The third Defendant in its grounds of opposition urged that the applicants have not demonstrated that they are the registered owners of the suit parcels as no evidence of ownership has been provided.

Counsel for the applicants filed written submissions on 8/9/2021 and again on 14/9/2021. No submissions were filed on behalf of the defendants.

I have carefully considered the application in its entirety including the affidavits, annexures, grounds in support and grounds in opposition.

I find that there are two issues to be decided at this interlocutory stage;

- a. Have the applicants established a prima facie case with a probability of success?
- b. Does the balance of convenience tilt in their favor?

This is trite law as was held in the famous case in *GIELLA –VS- CASSMAN BROWN* that for an injunction to issue, either of the two prerequisites listed above must be established by the applicant.

On the first issue, I find that the Plaintiffs have established a prima facie case with a probability of success. They have proved that they bought the suit parcels and they have never sold them yet the Defendants have not explained how they came to be registered as proprietors of the same land.

On the second issue, I find that the balance of convenience tilts in favour of the applicants who have established, prima facie, that they have been in possession of the suit parcels for about 30 years.

For the above stated reasons, I allow the application dated 3<sup>rd</sup> May, 2021. It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 10<sup>TH</sup> DAY OF NOVEMBER, 2021**

**M.N. GICHERU**

**JUDGE**