



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 8 OF 2021

BRIDGET KAJUJUPLAINTIFF

VERSUS

ROGERS KITHINJI....1ST DEFENDANT

FRANCIS MWEBIA ..2ND DEFENDANT

RULING

1. Before the court is the application dated 28.1.2021 seeking for both injunction and inhibition orders over **Parcel No. Abogeta/L Kiungone/1294** pending hearing and determination of the suit.
2. The application is supported by an affidavit sworn on 28.1.2021. The grounds are that the plaintiff has developed the suit land which lawfully belongs to him on account of inheritance and through agreement to exchange parcels between him and the 1st defendant.
3. Further and in total disregard to the aforesaid agreement, the plaintiff has established the 1st defendant transferred the land to the 2nd defendant who has given a demand to the plaintiff's daughter to hand over vacant possession.
4. The application is opposed through the 2nd defendant's affidavit sworn on 16.4.2021 in which he admits the relationship between the plaintiff and the 1st defendant, states the late Sammy Murithi initially owned **Parcel No. Abogeta L Kiungone/394**, was split to make No. 629 (in favour of 1st defendant) and 737 in favour of the plaintiff.
5. The 2nd defendant at paragraph 7 admits purchasing P/N 1294 in 2020 for **Kshs. 1,450,000/=** from the 1st defendant from which he took vacant possession and was issued with a title deed on 1.10.2020.
6. Further the 2nd defendant alleges the plaintiff does not occupy any part of the land, does not stay or live within the vicinity and there was another case namely **Nkubu ELC Case No. 4 of 2021**.
7. Lastly the 2nd defendant avers no substantial loss will be occasioned, he was an innocent purchaser for value and that the applicant has not met the threshold for grant of orders sought.
8. In his oral submissions, the applicant sought for the Nkubu ELC matter be transferred and consolidated. Similarly the court was requested for a scene visit to determine the developments on the suit land.
9. On the part of the respondents, there was no reply though he was duly served with the application.
10. As concerns the 2nd defendant, it was submitted the 2nd defendant was opposed to any transfer and consolidation of the Nkubu ELC case, land was lawfully bought and transferred and that the orders sought should not be granted on account of the replying affidavit.
11. The application has no specific prayers for any transfer and consolidation of this matter with the one before the Nkubu Law Courts. The applicant did not disclose such a matter in his verifying affidavit. It cannot however be that she did not know of its existence since both were filed four days apart with the one in Nkubu Law Courts being the 1st in time. Be that as it may the defendant has not filed any defence and or counterclaim. As and when pleadings are closed, the court shall give proper directions during the case conference proceedings.

12. Turning to the 1st prayer for temporary injunction, a party seeking such an order must establish a prima facie case with a probability of success, disclose he shall suffer irreparable loss and damage and lastly the balance of convenience tilts in favour of granting the said orders.

13. The applicant has no title deed unlike the 2nd defendant. He has attached nothing to show there was an agreement for the exchange of parcels in 1997 between the plaintiff and the 1st defendant. There are no records attached to show the plaintiff/applicant has constructed any approved buildings since 2006 and if so, any building permits from the County indicating that indeed the plaintiff has a stake on the alleged suit land.

14. Further the transfer and notice to vacate was given on 30.11.2020. The applicant only moved to court on 29.1.2021. The delay has not been explained at all. There is also no indication on what action the plaintiff took since the 1st defendant declined to exchange the property as alleged.

15. Under **Section 26** of the **Land Registration Act 2012**, a title deed is to be taken as prima facie evidence on ownership which rights are protected under both **Article 40** of the **Constitution** and **Order 40** of the **Civil Procedure Rules** except on account of fraud, illegality and acquisition through corruption means.

16. Whereas the plaintiff has pleaded fraud in the plaint, her rights if any are yet to be determined. This court would therefore take the option with lessor injustice.

17. Regarding irreparable loss and damage, the 2nd respondent has demonstrated he took over vacant possession in October, 2020, has developed the property and secondly avers the plaintiff/applicant does not occupy or live therein. A formal notice to vacate was made in October 2020 and subsequently the filing of the suit for eviction at Nkubu Law Courts.

18. Looking at the suit filed in Nkubu Law Courts the 2nd defendant admits the alleged to be a trespasser as a daughter of the 1st defendant. The 1st defendant has not sworn any affidavit to oppose this application. There is no indication the 2nd defendant has been authorized to swear the affidavit in reply on behalf of the 1st defendant yet he is the centre of this matter as the seller of the land.

19. The above notwithstanding, paragraphs 4, 5, 6, 7 and 8 of the plaint and the prayers sought clearly indicate the plaintiff is in occupation of the suit land hence the reason the 2nd defendant seeks to have her evicted.

20. The applicant has raised matters regarding fraud and or breach of trust against the defendants. The plaintiff/applicant appears to have some legitimate interest or rights over the suit land as held in **Mrao Ltd. -vs- First American Bank of Kenya Ltd & 2 others [2003] KLR 125.**

21. On the issue of inhibition orders, Section 68 and 69 of the Land Registration Act grants this court powers to impose such orders so as to preserve land in issue pending hearing and determination of the suit. I find the applicant to deserve such orders.

22. In the final analysis, I grant the following orders:-

- a. Status quo subsisting at the time of filing this suit to be maintained.**
- b. Inhibition orders to issue stopping any dealings or transactions relating to Parcel No. Abogeta/L Kiungone/1294.**
- c. The said orders to remain in force for a period of one year from the date hereon.**
- d. The respondents to file a defence to the plaint within 30 days from the date hereof.**
- e. Thereafter parties to comply with Order 11 within 45 days from the date hereof.**

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 20TH DAY OF DECEMBER, 2021

In presence of:

Mukaburo for 2nd Defendant

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE