



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 112 OF 2018

WANJA MUCHIGA.....1ST APPLICANT

BONIFACE MWANGI.....2ND APPLICANT

VERSUS

NELSON KIPTUM KOECH.....RESPONDENT

RULING

1. **Wanja Muchiga** and **Boniface Mwangi**, the Applicants, seek vide the Motion dated 1st October, 2018 for temporary injunction order restraining **Nelson Kiptum Koech**, the Respondent, by himself, his servants and or agents from selling, transferring, leasing, encumbering and or in any other manner whatsoever adversely dealing with the land parcel ***Eldoret Municipality Block 21 (King'ong'o) 309***, pending the hearing and determination of the suit. They also pray for costs. The application is based on the eight (8) grounds on its face and supported by the affidavit sworn by Boniface Mwangi on the 1st October, 2018.

2. The application is opposed by the Respondent who filed a Notice of Intention to raise preliminary objection dated 23rd October, 2018 raising the ground that the pleadings are defective and should be struck out with costs for being commenced through Notice of Motion. The Respondent also filed the replying affidavits sworn on the 25th October, 2018.

3. That the Respondent's Counsel filed their written submissions dated the 11th December 2018, while the Applicants' Counsel filed theirs dated the 4th December, 2019.

4. The Applicants' case is that the late Muchiga Mwangi, who was their father and husband respectively, bought 1.025 acres of King'ong'o L. R. No. 10492 from the Respondent for Kshs.26,000 vide Sale Agreement dated 16th September, 1983. That the late Muchiga took possession but died before the Respondent could transfer the land to him. That they have lived on the said land since then for about 35 years. That they are apprehensive the Respondent could deal adversely with the land, as they have seen strangers visiting the land, alleging that the Respondent wanted to sell it to them. The learned Counsel for the Applicants in their written submissions referred to the following superior court decisions: ***Giella Vs Cassman Brown & Company Ltd (1973) E.A. 358***, ***Mrao Ltd Vs First American Bank of Kenya Ltd & 2 Others [2003] eKLR***, ***Naftali Ruthi Kinyua Vs Patrick Thuita Gadure & Another [2015] eKLR*** and ***Teresiah Mwangui Thuita Vs Ignatius Maina Nduru [2019]eKLR***.

5. The Respondent's case on the other hand is that there is no grant to confirm that the 1st Applicant is the administrator of the estate of Muchiga Mwangi has been availed and that the power of Attorney relied upon by the 2nd Applicant has not been registered. That he had sold 1.025 acres to Muchiga Mwangi on 16th September, 1983 out of L. R. No. Eldoret Municipality Block 21 (King'ong'o) 309, and his family had been in possession without any interference to-date. That the Applicants' apprehension is therefore baseless. That he has been unable to transfer the parcel to the Applicants and other purchasers for the title is charged with a bank. That while awaiting discharge of the title, he learnt it had been misplaced and he notified the Applicants and other purchasers vide letter dated 11th September, 2018. That there is therefore no basis of seeking and issuing of the injunction order sought.

6. The following are the issues for determinations:

(a) Whether the Applicants have established a prima facie case with a probability of success for issuing of temporary injunction at this interlocutory stage.

(b) Who pays the costs?

7. The Court has carefully considered the grounds on the Motion, affidavit evidence, written submissions, pleadings filed and come to the following findings;

(a) That the Respondent has confirmed the existence of a sale agreement between him and the late Muchiga Mwangi who passed on the 6th September, 2014 over 1.025 acres out of King'ong'o Farm L. R. No. 10492 [*Now referred to as Eldoret Municipality Block 21 (King'ong'o) 309*].

(b) That the Respondent has also confirmed that the late Muchiga Mwangi took possession of the said parcel and that his family still lives on it to-date without any interference from him. That the Respondent had indeed written to the Applicant through Counsel the letter dated the 11th September, 2018 before filing of this suit reiterating that fact and promising to transfer their parcel once the title document which had been misplaced by the bank was traced. That the suit was commenced through the originating summons dated the 1st October, 2018 and the preliminary objection dated the 23rd October, 2018 is therefore misplaced.

(c) That though the Applicants have claimed that there are strangers who have been visiting the land alleging that the Respondent wanted to sell the land, the latter has disputed that claim in his deposition. That as the applicants have not availed any further particulars of the strangers, or of any act or omission by the Respondent that manifest interference of their use of the land, the Court finds that they have failed to establish a prima facie case with a possibility of success upon which restraining order could issue. That secondly, the Applicants have not shown what irreparable loss they are likely to suffer if the restraining order is not issued. That as the Respondent has expressed his preparedness to transfer the parcel to the Applicants once he settles the issue of the title, the Applicants will be better off to work with him towards that goal. That the balance of convenience would tilt towards not issuing the injunction.

(d) That so as to foster good will between the parties herein, each party will bear their own costs.

8. That flowing from above, the Applicants' Notice of Motion dated 1st October, 2018 is without merit and is dismissed with each party bearing their own costs.

Orders accordingly.

Dated and signed at Eldoret this 11th day of March, 2020.

S. M. KIBUNJA

JUDGE

Ruling read in open court in the presence of:

M/s Kuyiak for Applicants.

No appearance for Respondent.

Court Assistant: Christine