



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC MISC. APPLICATION NO. 100 OF 2019

AMULABI AMUKHULA VINCENT.....1ST APPLICANT

JANE NJERI KIAMA.....2ND APPLICANT

VERSUS

KAJIADO LAND REGISTRAR.....1ST RESPONDENT

CHIEF LAND REGISTRAR.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

What is before me for determination is the Applicants' Notice of Motion application dated the 22nd October, 2019 brought pursuant to Order 51 Of the Civil Procedure Rules; Section 14, 34, 86 of the Land Registration Act; Articles 27 (1), (2), (3), (4), 35, 40 (1) (3) of the Constitution. The Applicants seek the following orders:

1. Spent.
2. That the 1st and 2nd Respondents, their servants and agents be ordered to produce, avail and provide Records of land parcel title No. KAJIADO/ KITENGELA/ 96945 and KAJIADO/ KITENGELA/ 96975 and to members of the public and especially to the registered owners of this property.
3. That an injunction do issue restraining the 1st and 2nd Respondents, their servants and agents from concealing, hiding or seizing the records of land parcel title numbers: KAJIADO/ KITENGELA/ 96945 and KAJIADO/ KITENGELA/ 96975.
4. That the cost of this application be in the cause
5. That such further or other orders be made as the justice of the case demands suo moto or by oral application by the Applicant's Counsel.

The application is premised on the grounds on the face of it and the supporting affidavit of AMULABU AMUKHULA VINCENT and JANE

NJERI KIAMA where they depose that they are the Applicants herein. The 1st Applicant deposes that he is the registered proprietor of land parcel number KAJIADO/ KITENGELA/ 96945 while the 2nd Applicant is the owner of KAJIADO/ KITENGELA/ 96975. They confirm that the two parcels of land were alienated or subdivided from land BLOCK E, formally registered as KAJIADO/ KITENGELA/ 2038 through secret ballot in 1983, where the 1st Applicant was allocated Ballot paper No. 308 while the 2nd Applicant was allocated Ballot No. 338. They claim on or about September 2019, the 1st and 2nd Respondents without lawful cause concealed the file related to land parcel numbers KAJIADO/ KITENGELA/ 96945 and KAJIADO/ KITENGELA/ 96975 and placed them under key and lock. They contend that they are hence unable to conduct basic transactions on their properties, including registering charges, effecting transfers, or even conducting searches. They have learnt from the 1st Respondent that the 1st and 2nd Respondents have placed the Land Records to the entire land parcel BLOCK E formally registered as KAJIADO/KITENGELA/ 2038 (which now consists of 481 land parcels) under key and lock. They reiterate that the Respondents stand to suffer no loss/ prejudice if the orders sought are granted.

The Respondents though duly served as evident in the affidavit of service dated the 12th November, 2019 failed to enter appearance nor file a response to the instant application.

Analysis and Determination

Upon consideration of the Applicants' Notice of Motion application dated the 22nd October, 2019 including the supporting affidavit, the issues for determination are:

Whether the 1st and 2nd Respondents, their servants or agents should be ordered to produce, avail and provide Records of land parcel title No. KAJIADO/ KITENGELA/ 96945 and KAJIADO/ KITENGELA/ 96975.

Whether the Respondents their servants and agents should be restrained from concealing, hiding or seizing the records of land parcel numbers: KAJIADO/ KITENGELA/ 96945 and KAJIADO/ KITENGELA/ 96975.

As to whether the 1st and 2nd Respondents, their servants or agents should be ordered to produce, avail and provide Records of land parcel numbers. KAJIADO/ KITENGELA/ 96945 and KAJIADO/ KITENGELA/ 96975. The Applicants claim the 1st and 2nd Respondents have declined to avail the records in respect to land parcel Nos. KAJIADO/ KITENGELA/ 96945 and KAJIADO/ KITENGELA/ 96975. They contend that the said parcels of land were resultant subdivisions of KAJIADO/ KITENGELA/ 2038. A keen perusal of the annexures to the instant application, I note the Applicants have not annexed any request to the 1st and 2nd Respondents to avail the said land records, which request they failed to heed. Further, the Applicants have confirmed that the two parcels of land are part of the 481 parcels which were resultant subdivisions of BLOCK E (KAJIADO/KITENGELA/ 2038). From the annexure in the supporting affidavit they have attached the Certificates of Title and an Area list of the resultant subdivisions of KAJIADO/KITENGELA/2038.

Section 34 of the Land Registration Act provides that:

A person who requires an official search in respect of any parcel, shall be entitled to receive particulars of the subsisting entries in the register, certified copies of any document, the cadastral map, or plan filed in the registry upon payment of the prescribed fee.'

Further section 86 (1) of the Land Registration Act stipulates that:

‘ If any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on the Registrar by this Act, the Registrar or any aggrieved person shall state a case for the opinion of the Court, and thereupon the Court shall give its opinion, which shall be binding upon the parties.’

Since the 1st and 2nd Respondents never controverted the Applicants averments that they sought for a search in respect to their land. Further, since the right to access information is a Constitutional Right, this Court has no recourse but to direct the 1st and 2nd Respondents, their servants or agents to produce and avail Records of land parcel title No. KAJIADO/ KITENGELA/ 96945 and KAJIADO/ KITENGELA/ 96975 to the registered owners of this property.

As to whether the Respondents, their servants and agents should be restrained from concealing, hiding or seizing the records of land parcel numbers: KAJIADO/ KITENGELA/ 96945 and KAJIADO/ KITENGELA/ 96975. The Applicants in their supporting affidavit failed to demonstrate how the Respondents were concealing, hiding or seizing the records in respect to their suit properties. Further, they have learnt from the 1st Respondent that the Land Records to the entire land parcel BLOCK E formally registered as KAJIADO/KITENGELA/ 2038 (which now consists of 481 land parcels) where the suit properties emanated from are under key and lock. Since the 1st and 2nd Respondents are the institutions mandated to maintain Land Records and based on the circumstances at hand while relying on the principles as enshrined in the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358**, I find that the Applicants have failed to establish a prima face as against them to warrant the grant of injunctive reliefs as sought.

It is against the foregoing that I proceed to make the following orders in respect to the Notice of Motion application dated the 22nd October, 2019:

- i. That the 1st and 2nd Respondents, their servants or agents be and are hereby ordered to avail Records of land parcel No. KAJIADO/ KITENGELA/ 96945 and KAJIADO/ KITENGELA/ 96975 to the Applicants within 90 days from the date hereof.
- ii. Costs of the application will be in the cause.

Date signed and delivered via email this 13th day of May 2020

CHRISTINE OCHIENG

JUDGE