



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KITALE
LAND CASE NO. 126 OF 2014
RICHARD SHIVERENJE ISINDU.....PLAINTIFF
VERSUS
MACKEIN MAALA.....DEFENDANT
R U L I N G

1. The applicant filed a notice of motion dated 30/7/2014 in which he sought a temporary injunction restraining the defendant/respondent, his servants and/or agents from trespassing upon or in any way interfering with the plaintiff's peaceful use and possession of a plot measuring 50 x 100 feet on plot No. [particulars withheld] pending hearing and determination of this suit (suit land).
2. The applicant states that he bought the suit land on 9/1/2013 from one J N K. That he left the said JNK to take care of the suit land on his behalf after he left the country. That while he was away, J N K informed him that the defendant/Respondent had severally visited the suit land claiming that the same belonged to his late father E W M.
3. The applicant contends that the matter was referred to the chief of Matisi as well as the District officer who upon hearing J N K. V N L and the respondent advised the respondent that he had no right over the suit land. The applicant then visited the offices of the chief Matisi location who assigned him one of his assistant chiefs and security to proceed to the ground and have the plot boundary fixed. When they were on the ground, the respondent came and hurled insults at J N and this prevented the exercise from being carried out.
4. The respondent has opposed the applicant's application through a replying affidavit sworn on 30/9/2014 and filed in court on 1/10/2014. The respondent states that he is the son of E W M who is now deceased. That the deceased father had been married to J NK but that the two separated and the said J N K married elsewhere. The respondent's deceased father then married the respondent's mother who is also now deceased.
5. The respondent contends that the suit land was bought by his late father from one V N L on 30/10/1991 and that her step mother J N K surfaced in 2013 and purported to sell his father's land which she purports to have bought from V N L on 20/8/1993.
6. The respondent contends that both his father and mother were buried on the suit land and that J N K who is her stepmother is only out to disinherit them from the suit land where he is residing with his siblings.

7. I have gone through the applicant's application as well as the opposition to the same by the respondent. I have now to determine whether the applicant has demonstrated that he is entitled to the injunction sought. The principles for grant of injunction were well set out in the celebrated case of Giella -Vs- Cassman Brown Co. Ltd [1973] EA 358. First an applicant must demonstrate that he has a prima facie case with probability of success. Secondly, an injunction will not normally be issued unless the applicant might otherwise suffer irreparable loss which might not be compensated in damages. Thirdly, if the court is in doubt it will decide the application on the balance of convenience.

8. In the present application, the applicant contends that he bought the suit land from J N K on 9/1/2013. The applicant annexed a sale agreement in respect of the same suit land between J N K and V N L. According to this agreement, J N K bought the suit land from V NL on 20/8/1993. V N L has sworn affidavit in support of the applicant's application stating that he sold the suit land to J N Kon 20/8/1993 and that he is aware that Judith has sold the same land to the applicant.

9. The respondent on the other hand has annexed a sale agreement between his late father E W M and V NL. According to this agreement the respondent's father bought the suit land from V N L on 12/11/1991. The said V N L has not sworn any further affidavit to controvert the averments by the respondent. JN K has also not denied the respondents contention that she is his step mother who had separated from his father in the 80's and re-married elsewhere. To this extent the applicant has not demonstrated that he has a prima facie case with probability of success.

10. The purpose of an interlocutory injunction is to preserve the property in issue from waste or alienation. The property is yet to be registered in either of the names of the parties herein. It is the respondent who is in possession of the suit land. To grant a temporary injunction will be like evicting him from the suit land before this suit is heard on the merits. Besides this the applicant has not demonstrated that he will suffer any loss which will not be compensated in damages if the injunction is not granted.

11. The balance of convenience tilts against grant of injunction. It is the respondent in possession of the suit land. His father was the first to purchase the property. It is not clear how his estranged wife J N K came to buy the same property two years later from the same vendor. The details of all this will come during the hearing of the main suit. As for now, the applicant's application fails and the same is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 4th day of March, 2015.

E. OBAGA

JUDGE

In the presence of M/s Arunga for applicant. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

4/3/2015