



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 201 OF 2015

ESTHER CHEPKIRUI MASIT.....PLAINTIFF

VERSUS

ALBERT G TOO1ST DEFENDANT

NATIONAL LAND COMMISSION2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

RULING

(Application for injunction; principles to be applied; plaintiff claiming land that is registered in the name of the 1st defendant; plaintiff claiming that the land was fraudulently acquired; plaintiff having an allotment card bearing a different plot number; no connection shown between the plot number in the allotment card and the suit property; plaintiff's husband having had litigation over the same land with the 1st defendant whereupon he declared that he has no interest in the land; no prima facie case established; application dismissed with costs)

1. The application before me is that dated 4 July 2015. It is an application for injunction which was filed together with the suit. In the application, the plaintiff wants the 1st defendant restrained from the land parcel Nakuru/Ndoinet Settlement Scheme/176, or dealing with it, pending hearing and determination of the suit.

2. The said property is registered in the name of the 1st defendant, having acquired title on 12 October 2005. It is however the position of the plaintiff that the said property properly belongs to her and that the title of the 1st defendant is fraudulent. It is her case that the said land was allocated to her and she has annexed a copy of an allocation card No. 16233. She has averred that she has lived on the land since 1997 and that the 1st defendant has now entered the land, pulled down her house and forcefully planted maize on it. The plaintiff has annexed some resolutions from an entity called Ndoinet Land Disputes Resolution Elder Committee which resolved that the land belongs to her and some letters from the Chief and Assistant Chief.

3. On his part, the 1st defendant in his replying affidavit, has averred that he was properly allocated the suit land and given a title deed in the year 2005. He has averred that the husband of the plaintiff, one Michael Kipngetch Masit, has been interfering with the land which led to a criminal case against him, for physically attacking the plaintiff's wife, and later a civil suit, Nakuru ELC No. 43 of 2015 which was concluded by consent, whereupon Mr. Masit, affirmed that he has no interest in the land. It is the position

of the defendant that the said Mr. Masit is now using his wife to claim the land and that he brought her to the land from Bomet in mid- July 2015. He has averred that he settled in the land many years ago and has constructed residential houses some of which the plaintiff has contended belong to her. The 1st defendant has also filed a defence and counterclaim through which he has asked for an injunction to restrain the plaintiff from dealing with the property and an eviction order.

4. I have considered the application for injunction. The principles for the award of an injunction were well set out in the case of ***Giella vs Cassman Brown (1973) EA 358***. To succeed, one needs to demonstrate a prima facie case with a probability of success and further demonstrate that if the injunction is not granted, the applicant stands to suffer irreparable loss. If in doubt, the court will decide the application on a balance of convenience.

5. The case of the plaintiff is that she was allocated the suit property. However, save for the copy of the allocation of land card, which shows that she has been allocated Plot No. 16233, the plaintiff has exhibited nothing to show that the suit property was allocated to her. Neither has she shown any connection between the Plot No. 16233 said to have been allocated to her, and the land parcel Nakuru/Ndoinett Settlement Scheme/176, which is the suit property. There are some letters said to be from the Chief and Assistant Chief of Kiptororo Location and Chematich Sub-Location, stating that the Plot No. 176 belong to the plaintiff. But these letters cannot form the basis for claiming land. In fact the letter of the Assistant Chief is to me of dubious authenticity for it is dated 18 September 2005 and also 5 August 2004. The only other support to the claim by the plaintiff over the land is the minutes of the so-called Ndoinet Land Disputes Resolution Elder Committee. Now, I have no idea what this Committee is, and where it derives the authority to resolve matters of ownership of land. To me it appears to be a group that has no legitimacy, or any mandate in law to pass any resolutions on ownership of land. I in fact note that its Chairman is Kipngetch Masit, whom I strongly suspect to be the husband to the plaintiff, the same person who was sued by the 1st defendant and who declared to have no interest in the suit property. I frankly do not see any evidence which demonstrates to me that the 1st defendant acquired his title fraudulently.

6. The long and short of the above is that I am not convinced that the plaintiff has demonstrated a prima facie case with a probability of success. Being not in doubt, I need not consider the balance of convenience.

7. I find no merit in this application and it is dismissed with costs.

Dated, signed and delivered in open court at Nakuru this 4th day of November 2015.

MUNYAO SILA

JUDGE

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In presence of : -

N/A on part of M/s Gordon Ogolla & Kipkoech Advocates for plaintiff/applicant.

N/A on part of M/s Omwenyo & Co. for 1st defendant(respondent)

N/A on part of National Land Commission- 2nd respondent

N/A on part of State Law Office for 3rd respondent

Court Assistant : Janet

MUNYAO SILA

JUDGE

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