



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 106 OF 2019

TERESIA WANJIRU SALIMU.....1ST PLAINTIFF

EUNICE WAMBUI SAITOTI.....2ND PLAINTIFF

(Suing as the legal representative of the estate of Hannah Wairimu Salimu alias Hannah Wairimu Salim – Deceased)

VERSUS

JOSEPHAT KINAIYA SANINGU.....1ST DEFENDANT

PETER WAIRAGU PAKINE.....2ND DEFENDANT

JOHN LEMARON PAKENI.....3RD DEFENDANT

SEBASTIAN MICHKA MAMBILI.....4TH DEFENDANT

THE DISTRICT LAND REGISTRAR KAJIADO NORTH.....5TH DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....6TH DEFENDANT

RULING

What is before Court for determination is the Plaintiffs' application dated the 8th June, 2020 where they seek the following orders:

1. Spent
2. THAT pending the hearing and determination of this application that SEBASTIAN MICHKA MAMBILI (4th Defendant) be restrained from trespassing and or demolishing premises situate at LRNO. NGONG/NGONG/49484.
3. THAT pending the hearing and determination of the main suit one SEBASTIAN MICHKA MAMBILI (4th Defendant) be restrained from trespassing and or demolishing premises situate at LRNO. NGONG/NGONG/49484.
4. THAT cost of this suit be borne by the Defendants.

The application is premised on the grounds on the face of it and the supporting affidavit of the 1st Plaintiff EUNICE WAMBUI SAITOTI where she deposes that her mother passed away on 19th March 2018 and was survived by eight (8) children. She claims her mother left behind LRNO. NGONG/NGONG/44376, 44377 and 49484 respectively. She avers that the 1st and 2nd Defendants without filing any succession cause fraudulently sold the suit properties to the 3rd and 4th Defendants. She contends that the 4th Defendant took advantage of the COVID-19 pandemic to demolish premises on LRNO. NGONG/NGONG/49484 knowing that there is a case pending in court.

The application is opposed by the 4th Defendant SEBASTIAN MICHKA MAMBILI who filed a replying affidavit where he deposes that he owns LR No. Ngong/ Ngong/ 44377 which he purchased from the 2nd Defendant, with structures on the said land. He denies being in possession of LR No. Ngong/ Ngong/ 49484 hereinafter referred to as the 'suit land'. Further, that his land is adjacent to the suit land as shown by the Plaintiffs. He further denies demolishing property on the suit land as there exists a residential house thereon which belonged to the late Hannah Wairimu Salimu which is now occupied by the 2nd Defendant and his family. He contends that he was doing renovations on his land which the Plaintiffs' mistook for the suit land. Further, that the 2nd Defendant currently resides on the said suit land with his family

and has never raised any complaints of trespass against him. He insists the application is misconceived, frivolous and vexatious and the same ought to be dismissed. Further, it does not meet the stringent requirements for an injunction. He reiterates that the application is riddled with falsehoods and contradictions as it is clearly not supported by documentary evidence.

The application was canvassed by way of written submissions from the Plaintiffs and 1st to 4th Defendants.

Analysis and Determination

Upon consideration of the instant Notice of Motion application including the rivaling affidavits and submissions, the only issue for determination is whether the Plaintiffs' are entitled to orders of interlocutory injunction pending the outcome of the suit.

The Plaintiffs claim the 4th Defendant has trespassed on their land and committed acts of destruction, which fact is denied. The Plaintiffs in their submissions reiterated their claim above. The 1st to 4th Defendants in their submissions stated that the Plaintiffs had not established a prima facie case to warrant the orders sought. They denied that the 4th Defendant had trespassed on the suit land and sought for the instant application to be dismissed with costs. They relied on various decisions including **Giella Vs Cassman Brown (1973) EA 358; Mrao Vs First American Bank of Kenya Limited & 2 Others (2003) KLR 125; Kenleb Cons Ltd Vs New Gatitu Service Station Ltd & Another (1990) eKLR; and Nguruman Limited Vs Jan Bonde Nielsen & 2 Others CA 77 of 2012** to buttress their arguments.

In line with the principles established in the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358**, I wish to analyse whether the Plaintiffs' have established a prima facie case to warrant the orders sought. The Plaintiffs' seek to restrain the 4th Defendant from interfering with the suit land. The Plaintiffs in their supporting affidavit have annexed a photograph of a heap of stones to demonstrate how the 4th Defendant was interfering with the suit land. The 4th Defendant confirms owning a parcel of land neighbouring the suit land, denies interfering with it and avers that it is the 2nd Defendant who resides thereon. Further, that the 2nd Defendant has never lodged a complaint in respect of his using his land. The 4th Defendant explains that the Plaintiffs' are not residents in the suit land. Further, that he has been undertaking developments on his land and not the suit land. From the averments in the Plaintiffs' supporting affidavit, they have not clearly demonstrated how the 4th Defendant is interfering with the suit land where the 2nd Defendant resides. Further, I note that the 2nd Defendant is actually their brother and they have not denied that he resides in their late mother's house which is on the suit land. They have not established whether they also reside on the said suit land. Based on my analysis above as well as the facts as presented, and in line with the principles enshrined in the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358**, at this juncture, I find that the Plaintiffs have not established a prima facie case as against the 4th Defendant to warrant the injunctive orders sought. Further, in relying on the decision of **Nguruman Ltd v Jan Bonde Nelson & 2 others, Civil Appeal No.21 of 2014(UR)** where the Court held that if a prima facie case is not established, then irreparable injury and balance of convenience need no consideration, I will hence not consider the remaining two conditions as the Plaintiffs failed to meet the first condition set to warrant the grant of an injunction.

It is against the foregoing that I find the Plaintiffs' application dated the 8th June, 2020 unmerited and will proceed to dismiss it. I further vacate the ex parte orders of temporary injunction which were granted on 9th June, 2020 pending the outcome of the instant application.

Costs will be in the cause.

Dated, signed and delivered in Kajjado this 23rd Day of September, 2020.

CHRISTINE OCHIENG

JUDGE