



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC CASE NO. 749 OF 2013

CHARLES NDWIGA IRERI PLAINTIFF

VERSUS

THE HON. ATTORNEY GENERAL 1ST DEFENDANT

EMBU MUNICIPAL COUNCIL 2ND DEFENDANT

FRANCIS KARANJA MAINA 3RD DEFENDANT

JACOB NGEI NTHINI 4TH DEFENDANT

HELLEN WAIYUGO NJUE 5TH DEFENDANT

HARRISON NJUE NJERU 6TH DEFENDANT

RULING

The plaintiff herein filed this suit on 6th July 2012 seeking the following orders against the defendants:-

- a. *That the defendants by themselves, their agents/servants be restrained by a Temporary order of this Honourable Court from alienating, allotting, allocating, trespassing, charging, subdividing, approving plans for development or developing or allowing occupation or development or developing or interfering in any manner with title or land L.R 1112/1511 and L.R 1112/1512 till this case is heard and disposed of.*
- b. *This Honourable Court do declare title or any dealing transfer, charge, mortgage alienation and development of title No. L.R 1112/1206. L.R 1112/1511 and L.R 1112/1512 Embu Municipality void at initio*
- c. *This Honourable Court do declare the 3rd to 6th defendants are holding suit land L.R 1112/1511 and 1112/1512 in trust for the plaintiff*
- d. *That the defendants by themselves, their servants and/or agent be compelled by mandatory order of this Court to transfer parcel No. 1112/1512 and L.R 1112/1511 Embu Municipality to plaintiff failure of which the Deputy Registrar of this Honourable Court be mandated by this Court to transfer suit land L.R 1112/1511 and L.R 1112/1512 to plaintiff. In the alternative the defendants jointly and severally do pay to the plaintiff Ksh. 50 million compensation*
- e. *General damages*
- f. *Interest on (d) above*
- g. *Any other or further order this Honourable Court deem fit to issue*

h. Costs of this suit be provided for.

It is clear from paragraph 5 of the plaint that the plaintiff's claim arises out of an allotment to him of plot No. 1112/359 on or about 1977 by the 2nd defendant and although the plaintiff paid the necessary fees, and was issued with letters of allotment, the 2nd defendant grabbed the plot which was then segmented into four plots which were allocated to other parties some of whom are not sued in this suit.

Simultaneously with that plaint, the plaintiff filed an application seeking injunctive remedies in relation to the said properties which orders were granted.

Meanwhile, defences were filed by the 1st, 5th and 6th defendants and although I can see an application dated 31st October 2012 by the plaintiff seeking to strike out the defence of the 2nd and 3rd defendants, I see no such defences in the file. In their defence, the 5th and 6th defendants deny that they are holding the land in trust for the plaintiff stating that they have a valid title over L.R No. 1112/1512.

The 2nd defendant has now filed a preliminary objection on the ground that:-

- a. ***The suit is time barred***
- b. ***The plaintiff has filed a multiplicity of suits all seeking similar reliefs.***

The above application is the subject of this ruling. Submissions have been filed by the 1st defendant, 2nd to 4th defendants and 5th to 6th defendants all supporting that application by the 2nd defendant. The plaintiff has also filed submissions on the same which I have considered together with the various affidavits and annexures.

At the start of this ruling, I did itemize the plaintiff's claims against the defendants. In paragraph (c) of his prayers, he has sought the following orders:-

(c) “The Honourable Court do declare the 3rd to 6th defendants are holding suit land L.R 1112/1511 and 1112/1512 in trust for plaintiff”

It is clear therefore that one of the remedies being sought is a declaration of trust and under **Section 20 of the Limitation of Actions Act (Cap 22 laws of Kenya)**, no period of limitation shall apply in an action founded on trust. See also the case of **STEPHENS VS STEPHENS 1987 K.L.R 125**, whether or not a trust exists will of course be a matter of evidence to be determined at the trial but what is clear at this stage is that so long as the claim is in trust, the limitation period under **Section 19 (1) of the Limitation of Actions Act (Chapter 22 laws of Kenya)** cannot be invoked to defeat this claim. Therefore the preliminary objection that this suit is time barred cannot be up-held and is dismissed.

The other objection raised is that the plaintiff has raised a multiplicity of suits seeking similar reliefs as in this case. From the submissions, it would appear that other than this suit the plaintiff has also instituted the following suits>-

1. ***Embu H.C.C.C No. 148 of 2010 (OS)***
2. ***Misc Civil Application No. 189 of 2011***

It is infact submitted that in Embu H.C.C.C No. 148 of 2010, the plaintiff obtained a judgment in his favour. However, the pleadings in the above two cases were not availed to me so that I could be in a position to determine whether this suit is res-judicata. All that was availed was an order in Embu H.C.C.C No. 148 of 2010 which only involves the plaintiff and the Commissioner of Lands with regards to plot No. 1112/1206. There is nothing to suggest that the other parties herein were also involved in that suit and indeed the order in that suit shows that it only involved plot No.

L.R 1112/1206 and not the other properties mentioned in this suit. Therefore, even if there have been a multiplicity of suits, this claim can only be defeated if it is established that it is res-judicata and from the material placed before me, it has not been established by the defendants that this suit is res-judicata. That preliminary objection is equally dismissed.

The up-shot of the above is that the Preliminary Objection filed by the 2nd defendant on 28th March 2013 is hereby dismissed with costs.

B.N. OLAO

JUDGE

12TH FEBRUARY, 2014

12/2/2014

Coram

B.N. Olao – Judge

CC – Mwangi

Mr. Mugo for Plaintiff – present

No appearance for Defendants

COURT: Ruling delivered in open Court this 12th day of February 2014.

Mr. Mugo for plaintiff present

No appearance for defendants.

B.N. OLAO

JUDGE

12TH FEBRUARY, 2014