



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC CASE NO. 107 OF 2019**

**KERANDU OLE MUTUNKEI.....PLAINTIFF**

**VERSUS**

**EMILIO WANDERI KAHIGA.....1<sup>ST</sup> DEFENDANT**

**ALICE WANGUI AIDAH.....2<sup>ND</sup> DEFENDANT**

**MARY WANJIRU GICHANGO.....3<sup>RD</sup> DEFENDANT**

**FRANCIS KIBANDI MUIRURI.....4<sup>TH</sup> DEFENDANT**

**CHIEF LAND REGISTRAR.....5<sup>TH</sup> DEFENDANT**

**CHIEF LAND REGISTRAR, KAJIADO.....6<sup>TH</sup> DEFENDANT**

**THE HON, ATTORNEY GENERAL.....7<sup>TH</sup> DEFENDANT**

**RULING**

What is before Court for determination is the Plaintiff's Notice of Motion application dated the 17<sup>th</sup> December, 2019 brought pursuant to Order 40 Rule 1 and Order 51 of the Civil Procedure Rules as well as Sections 1A, 1B and 3A of the Civil Procedure Act. The Plaintiff seeks orders of injunction restraining the Defendants, their agents or servants from interfering with land reference numbers Kajiado/ Ololoitikosh/ Kitengela/ 3220, 3481, 3482, 3483, 29998, 29999 and 30000 pending the outcome of this suit.

The application is premised on the grounds on the face of it and the supporting affidavit of KERANDU OLE MUTUNKEI where he deposes that he is the registered owner of suit properties herein particularly known as Kajiado/ Ololoitikosh/ Kitengela/ 3220, 3481, 3482, 3483, 29998, 29999 and 30000. He explains that he was duly registered as the owner of Land parcel number Kajiado/ Ololoitikosh/ Kitengela/ 3138 which he subdivided into 3219, 3220 and 3221 respectively, in 1991. Further, that he sold Kajiado/ Ololoitikosh/ Kitengela/ 3221 to Nahashon Kimani and retained Kajiado/ Ololoitikosh/ Kitengela / 3219 and 3220. He confirms that he never developed any of the remaining portions but in 2018 he saw temporary structures thereon and reported matter to the Chief and Governor's office. Further, on 26<sup>th</sup> September, 2019, he discovered that he had misplaced/ lost his titles and identification documents and reported the matter to Kitengela Police Station. Further, his advocate conducted a search from the 6<sup>th</sup> Defendant and discovered that his parcel of land known as Kajiado/ Ololoitikosh/ Kitengela/ 3220 had been fraudulently subdivided into smaller portions and title numbers obtained by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants respectively. He contends that the 5<sup>th</sup> and 6<sup>th</sup> Defendants either by themselves or their servants fraudulently processed the aforementioned titles in favour of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants without regard to the due procedures.

The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants though duly served through substituted service of summons failed to enter appearance nor oppose the instant application. The 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants entered appearance and filed a Defence but did not oppose the instant application. The Plaintiff filed his submissions to canvass the instant application.

**Analysis and Determination**

Upon consideration of the Notice of Motion application including the supporting affidavit, annexures thereon and submissions, the only issue for determination is whether the Plaintiff is entitled to orders of temporary injunction pending the outcome of the suit.

In his submissions, the Plaintiff reiterated his claim and relied on the decisions of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358; Mrao Ltd Vs First American Bank of Kenya Ltd & 2 Others (2003) KLR; Joel Kipkirui Arap Koech Vs Alice Wambui Magandu & 3 Others (2018) eKLR; Daniel Mbithi Mathiu Vs Consolidated Bank of Kenya Ltd & Another (2012) eKLR; and Paul Gitonga Wanjau Vs Gathuthis Tea Factory Company Ltd & 2 others (2016) eKLR** to buttress his arguments.

In line with the principles enshrined in the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358**, I will proceed to analyse whether the Plaintiff has established a prima facie case to warrant the orders sought. It is not in dispute that the Plaintiff was the owner of land parcel number Kajiado/ Ololoitikosh/ Kitengela/ 3138 which he subdivided into 3219, 3220 and 3221 respectively, in 1991. Further, that he sold Kajiado/ Ololoitikosh/ Kitengela/ 3221 to Nahashon Kimani and retained land parcel number Kajiado/ Ololoitikosh/ Kitengela / 3219 and 3220 respectively. The Plaintiff claims that his title documents got lost/ misplaced and on undertaking a search, he discovered his land parcel number Kajiado/ Ololoitikosh/Kitengela/ 3220 had been fraudulently subdivided, with the resultant subdivisions registered in the names of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants respectively.

Looking at the documents presented by the Plaintiff which were not controverted, it is clear he has a legitimate claim over the suit properties which are resultant subdivisions of Kajiado/ Ololoitikosh/Kitengela/ 3220 that he initially owned. However, on perusal of the Green Cards, I note the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs acquired their respective titles between 1992 upto 2003. Further LR No. Kajiado/ Ololoitikosh/ Kitengela/ 3483 had since been subdivided in 2013 and the said title closed. I opine that it would be pertinent if any third parties who acquired the resultant subdivisions were made parties to this suit. Since the dispute herein touches on title to land, it is pertinent if the substratum of the suit was preserved pending the determination of this case.

Since the application proceeded unopposed and there is no evidence to rebut the claim by the Plaintiff, I find that the Plaintiff has indeed established a prima facie case with a probability of success and will proceed to allow the Notice of Motion dated the 17<sup>th</sup> December, 2019 and make the following orders:

1. Pending the hearing and determination of this suit, an order of temporary injunction be and is hereby issued restraining the Defendants, their agents and/or servants from transferring Kajiado/ Ololoitikosh/ Kitengela/ 3220, 3481, 3482, 3483, 29998, 29999 and 30000 or any resultant subdivisions therefrom.
2. The Land Registrar, Kajiado is further directed to register an inhibition Order against land parcel numbers Kajiado/ Ololoitikosh/ Kitengela/ 3220, 3481, 3482, 3483, 29998, 29999 and 30000 or any resultant subdivision therefrom, pending the outcome of the suit.
3. The Plaintiff is awarded the costs of the application.

**Dated, signed and delivered at Kajiado this 21<sup>st</sup> September, 2020.**

**CHRISTINE OCHIENG**

**JUDGE**