



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC. CASE NO. 798 OF 2012

MARION WANJIRU NJOROGEPLAINTIFF/APPLICANT

VERSUS

MARGARET WAMBUI NJAU.....1ST DEFENDANT/RESPONDENT

WALLACE MWAURA MUNGAI.....2ND DEFENDANT/RESPONDENT

JANE KAWIRA.....3RD DEFENDANT/RESPONDENT

MR. KIARIE.....4TH DEFENDANT/RESPONDENT

REGISTRAR OF LANDS.....5TH DEFENDANT/RESPONDENT

THIKA DISTRICT LAND REGISTRY.....6TH DEFENDANT/RESPONDENT

RULING

Coming up before me for determination is the Notice of Motion dated 5th November 2012 in which the Plaintiff/Applicant is seeking for orders of a temporary injunction restraining the Respondents from dealing with the parcel of land known as Ruiru Kiu Block 2/Githunguri/4252 (hereinafter referred to as the "Suit Property") pending the determination of this application and suit. She also seeks for orders that the Land Registrar Thika Land Registry be ordered to produce all the records pertaining to the registration, ownership and subdivision of the Suit Property and that he be restrained from effecting any transfer on the Suit Property pending the hearing and determination of this application. The Plaintiff/Applicant also seeks for costs of this application.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of Marion Wanjiru Njoroge sworn on 5th November 2012 in which she avers that around 1982, she purchased 100 ordinary shares in Githunguri Constituency Ranching Co. Ltd and was issued with a Share Certificate No. 565 which she produced. She further averred that thereafter she made several payments to that company in respect of the Suit Property which was allocated to her. In further support of her claim of ownership to the Suit Property, the Plaintiff/Applicant exhibited a certificate of clearance issued by the company and official receipts for payment of survey fees, fees for the water project and fees for re-survey. She however stated that all this time, she was unable to have the title deed of the Suit

Property processed in her name. She then stated that sometime in August 2012, she noticed that some people were erecting illegal structures in the nature of fences on the Suit Property. She indicated that upon noticing that, she reported the matter to Githunguri Constituency Ranching Co. whose chairman accompanied by the police informed the trespassers that the Suit Property belonged to her. She also stated that she reported the matter to the Criminal Investigation Department who commenced investigations on this issue. She noted that despite all her effort, the Respondents have continued to occupy and erect structures on the Suit Property.

The Application is contested. The 2nd Defendant, Wallace Mwaura Mungai, filed his Replying Affidavit sworn on 15th April 2013 wherein he stated that around August 2010 he heard about a parcel of land up for sale from a broker and that the said broker took him to see the Suit Property. He further averred that he met the owner thereof being the 1st Defendant, Margaret Wambui Njau, with whom he negotiated a purchase price of Kshs. 3.2 million. He further averred that the 1st Defendant gave him a copy of her title deed as well as a certificate No. 693 all in her name. He produced copies of the title deed and certificate. He also confirmed having carried out a search on the Suit Property and confirmed that indeed, the 1st Defendant was the registered proprietor thereof and that there were no encumbrances registered against it. He further stated that both he and the 1st Defendant entered into a sale agreement drafted by Wambua Njuguna Kambira Advocate which they both signed. He produced a copy of that sale agreement. He confirmed that he paid the entire purchase price to the 1st Defendant and on 24th February 2011, the Suit Property was transferred into his name and a title deed was issued to him. He added further that he thereafter took a surveyor to subdivide the Suit Property into 12 portions and that this exercise yielded new titles namely Nos. 7584 to 7595 which he has since sold to third parties. He further stated that the Plaintiff/Applicant is a stranger to him as he purchased the Suit Property from the 1st Defendant for value without notice.

The Application is further opposed by the 3rd Interested Party who filed her Replying Affidavit sworn on 2nd July 2013 wherein she stated that about September 2011, she came across an advertisement in the Daily Nation newspaper offering for sale certain parcels of land in Ruiru. She stated that she made a follow-up and came to learn that those parcels of land belonged to the 2nd Defendant, a person who was known to her. She further stated that she conducted an official search at the Land Registry and confirmed that indeed, the title was in the 2nd Defendant's name and was clean. She confirmed that subsequently, she and the 2nd Defendant entered into a sale agreement for the sale of the parcel Ruiru/Kiu Block 2/7587 at an agreement consideration of Kshs. 700,000/-. She also confirmed that she paid up the purchase price in full as agreed and obtained a title deed to her parcel which she exhibited to the court. She stated that she was an innocent purchaser for value and that her title is indefeasible. She further disclosed that she has developed her parcel of land with a permanent structure. She requested for the Plaintiff/Applicant's application to be dismissed.

The Application is also opposed by the 1st Interested Party, James Njau Ndirangu, who filed his Replying Affidavit sworn on 2nd July 2013 wherein he made similar averments as the 3rd Interested Party save that he stated that he purchased the parcel Ruiru/Kiu Block 2/7595 in the name of his company Cash flow Technologies. He attached a copy of his title deed.

The 2nd Interested Party, Silas Kivuti Njeru, also filed his Replying Affidavit sworn on 2nd July 2013 wherein he made similar averments as the other two interested parties, laying claim to the parcel of land known as Ruiru/Kiu Bloc 2/7590 and Ruiru/Kiu Block 7591 at an agreed consideration of Kshs. 1.1 million. He exhibited his title deed, sale agreement and certificates of official search.

The Plaintiff/Applicant and the 2nd, 4th Defendants and the Interested Parties all filed their written submissions which have been read and taken into account in this ruling.

In deciding whether to grant the temporary injunction, I wish to refer to and rely on the precedent set out in the case of **GIELLA versus CASSMAN BROWN (1973) EA 358** in which the conditions for the grant

of an interlocutory injunction were settled as follows:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

Has the Plaintiff/Applicant made out a prima facie case with a probability of success? In the case of **MRAO versus FIRST AMERICAN BANK OF KENYA LIMITED & 2 OTHERS (2003) KLR 125**, a prima facie case was described as follows:

“a *prima facie* case in a Civil Application includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

In determining whether the Plaintiff/Applicant has established a prima facie case, I must consider whether she has established proprietary rights over the Suit Property in comparison to the competing claims of ownership thereof by the 2nd Defendant as well as the Interested Parties. The Plaintiff/Applicant claims that she was allocated the Suit Property by a company called Githunguri Constituency Ranching Co. Ltd after purchase of some shares therefrom. She has not made this company a defendant in this suit and has instead sued the Defendants and Interested Parties. She has therefore not established any relationship with the Defendants as well as the Interested Parties. Her claim to ownership of the Suit Property is supported by a share certificate and receipts issues to her by Githunguri Constituency Ranching Company. In contrast to that, the 2nd Defendant produced to the court his title deed to the suit property which he stated he purchased from the 1st Defendant. He also exhibited the title deed of the 1st Defendant to the Suit Property. Further, the Interested Parties all exhibited their title deeds to certain parcels of the Suit Property which was subdivided. As matters stand, it appears to me that the Plaintiff/Applicant’s claim of ownership over the Suit Property is weak in light of the existence of titleholders in respect thereof. The Plaintiff/Applicant has not produced any agreement to purchase the Suit Property between her and the other parties to this suit or even with Githunguri Ranching Company Ltd which she opted not to sue. There is therefore no privity of contract between her and the other parties to this suit. I find that she has accordingly failed to establish a prima facie case with a probability of success at the main trial. In light of that finding, I see no reason to further interrogate whether the Plaintiff/Applicant has satisfied the other two conditions set out in the *Giella* Case cited above.

In light of the foregoing, this Application is hereby dismissed. Costs shall be in the cause.

SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF FEBRUARY 2014

MARY M. GITUMBI

JUDGE