



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC MISC. APPLICATION NO. 12 OF 2020

(FORMERLY ELC MISC. APPLICATION NO. 4 OF 2014, NYERI)

(ORIGINALLY H.C. MISC. APPLICATION NO. 22 OF 2002, NYERI)

IN THE MATTER OF LAND PARCEL NO. NGARIAMA/MERICHI/742, 417 AND 743

AND

IN THE MATTER OF LAND PARCEL NO. NGARIAMA/MERICHI/461

JACKSON KARIUKI GIKANDO

(Suing as the Legal Administrator of the Estate of NJINE MWARA).....APPLICANT

VERSUS

STEPHEN NDEGWA MWANGI.....1ST RESPONDENT

FRIDAH GACHERI KARIMI.....2ND RESPONDENT

IRENE WOTHAYA.....3RD RESPONDENT

RULING

The Applicant through a Notice of Motion filed under certificate of urgency dated 9th July, 2019 sought the following orders:-

(1) Spent.

(2) That pending the hearing of this application, a temporary injunction do issue restraining the Respondent, his agent and/or servants from entering, taking over, sub-dividing, transferring, alienating on land parcel No. NGARIAMA/MERICHI/461 and/or in any other way dealing with the said parcel of land.

(3) That pending hearing and determination of the suit, an order of injunction do issue herein restraining the Respondent, his agents and/or servants from entering, taking over, sub-dividing, transferring, alienating on land parcel No. NGARIAMA/MERICHI/461 and/or in any other way dealing with the said parcel of land.

(4) That pending hearing and determination of the suit, an order of inhibition do issue restraining any dealings whatsoever with land parcel No. NGARIAMA/MERICHI/461.

(5) That costs of this application be provided for.

The application which is brought under certificate of urgency is on thirty two (32) grounds shown on the face of the said application supported by the affidavit of the Applicant Jackson Kariuki Gikando sworn on 9th July 2020. The said affidavit is further supported by numerous annexures.

The Respondents did not file any replying affidavit or grounds of opposition in response thereof and the Court after being satisfied that the

Respondents were properly served directed that the application proceed Ex-parte.

APPLICANTS CASE

It is imperative to note that this case was transferred to this Honourable Court pursuant to an order of Justice Mary Oundo from ELC Nyeri on 1st July 2020. The case was formerly Misc Application No. 04 of 2014 (Nyeri). According to the Applicant, the said (former) case Misc. Application No. 04/2014 is related to an original case Misc. Application No. 122 of 2002 (Nyeri). The Applicant also contends that this case is related to another case pending before this Honourable Court being ELC No. 25 of 2019 which is awaiting hearing and determination. The Applicant further stated that on 13th March 2020, this Honourable Court discharged interim orders it had issued in ELC No. 25 of 2019 the result wherefore the 1st and 2nd Respondents are now threatening to sell the suit land which is the subject of the suit.

The Applicant also stated that he is the administrator of the Estate of Njine Mwara (deceased) vide a grant issued on 13th May 2010 which has not been revoked. He stated that in pursuant to implementing his duties as an administrator of the Estate of Njine Mwara (deceased), he came across the entries on land parcel No. NGARIAMA/MERICHI/461 that dispossess the Estate of Njine Mwara (deceased). The Applicant further stated that there was another certificate of confirmation of grant (revoked) that had been issued to Francis Njeru Njine that had caused a registration of a transmission as evidenced by entries No. 3, 4 and 5 of the green card marked **JKG 3**. The Applicant also stated that the said grant to Francis Njeru Njine (deceased) was revoked vide a ruling dated 2nd October 2007 in Nyeri High Court in Misc. Application No. 122 of 2002 for failure to disclose material facts.

It is further stated that that revoked grant had caused a registration as against the title and therefore the order of revocation dated 9th October 2007 was registered as Entry No. 6 on the green card thus having the effect of cancelling the Entries No. 3, 4 and 5 on the green card and therefore having the property above mentioned revert back to the Estate of Njine Mwara (deceased). The Applicant stated that consequently thereafter, the certificate of grant which was issued to him and one Mary Kanini Njine (deceased) was registered as against the title being the appointed administrator of the Estate of Njine Mwara in Embu Succession Cause No. 289 of 2009. The Applicant further stated that pursuant to the said certificate of grant issued to him and the said Mary Kanini Njine (deceased) on 13th May 2010, entries No. 7 & 8 on the green card were made. However, a Court order was issued on 6th February 2014 from Miscellaneous Application No. 122 of 2002 (Nyeri High Court) which was used to an entry No. 9 on the green card which vacated entries No. 6, 7 and 8.

The Applicant further stated that the order issued on 6th February 2014 ousted the certificate of grant issued on 13th May 2010 without the due process revoking the same. The Applicant also contends that the order dated 6th February 2014 was obtained after the High Court in Nyeri in Miscellaneous Application No. 122 of 2002 was functus officio vide its ruling dated 2nd October 2007 and subsequently the order dated 9th October 2007 which has never been appealed against to-date. The Applicant further contends that the order dated 6th February 2014 was obtained after the High Court in Embu vide Succession Cause No. 289 of 2009 had issued a certificate of confirmation of grant on 13th May 2010 to both the Applicant and his co-administrator in respect of property land parcel No. NGARIAMA/MERICHI/461 to which has never been challenged to-date.

RESPONDENTS CASE

The Respondents did not file a replying affidavit or grounds of opposition in response to the application.

LEGAL ANALYSIS AND DECISION

This case was first commenced as succession cause before the Resident Magistrate's Court No. 77 of 1987 (Kerugoya). The grant of letters of administration of the Estate of Njine Mwara (deceased) was issued to one Njeru Njine. Being aggrieved by the said grant, one Mary Kanini Njine moved to the High Court of Kenya at Nyeri vide Miscellaneous Application No. 122 of 2002 (Nyeri) seeking to have the said grant revoked. In a ruling delivered on 2nd October 2007, Justice Mary Kasango (as she then was) revoked the grant of letters of administration issued to Francis Njeru Njine on 21st June 1998 in R.M. Succession Cause No. 77 of 1987. In yet another Succession Cause 289 of 2009 at the High Court in Embu a certificate of grant was issued in respect of the same Estate of Njine Mwara (deceased) to one Mary Kanini Njine and Jackson Kariuki Gikando on 13th May 2010.

The Applicant herein has admitted in his pleadings that the 1st and 2nd Respondents have been registered as the current proprietors of land parcel No. NGARIAMA/MERICHI/461 on 26th April 2019 whereas they are not beneficiaries of the Estate of Njine Mwara (deceased). The jurisdiction of the Environment and Land Court is conferred by the Constitution under **Article 162 (2) (b) and Statute under Section 13 of Environment and Land Court Act No. 19 of 2012**. Being a special Court, the Environment and Land Court has no mechanism to determine the beneficiaries of the Estate of a deceased person as that is a jurisdiction donated to a Succession Court. Since the Applicant has admitted that the 1st and 2nd Respondents are the current registered proprietors of the suit land parcel No. NGARIAMA/MERICHI/461, this Court cannot go beyond the registered proprietors at the interlocutory stage as those are issues to be determined at the full hearing. Until the full hearing of this case, this Court will take judicial notice of the current registered owner(s) of the suit property as provided for under **Section 26 (1) of the Land Registration Act No. 3 of 2012**, which provides as follows:-

“The Certificate of Title issued by the Registrar upon Registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except:-

(a) On the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) Where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme”.

The Applicant in his supporting affidavit at paragraph 3 admitted that the Respondents were registered as the current proprietors of land parcel No. NGARIAMA/MERICHI/461 on 26th April 2019 whereas they are not beneficiaries of the Estate of Njine Mwara. Until this Court determines through hearing whether the Respondents obtained registration of the suit property illegally, un-procedurally or has acquired through a corrupt scheme, the title issued to the current proprietors shall be taken as absolute and indefeasible. In order to grant conservatory orders of the nature the Applicant is seeking at an interlocutory stage, the Applicant must satisfy the principles for injunction in the celebrated case of *Giella Vs Cassman Brown Co. Ltd (1973) E.A. 358*. In that case, the Court set out the three conditions as follows:-

- 1. The Applicant must establish a prima facie case with a probability of success.***
- 2. The Applicant must show that he will suffer irreparable loss that cannot be compensated by an award of damages; and***
- 3. Where the Court is in doubt, the case to be decided on a balance of convenience.***

The factual statement and the annexures as submitted by the Applicant present the two succession causes and two Miscellaneous Applications being No. 122 of 2002 and No. 4 of 2014. The two Miscellaneous Applications were filed in the High Court at Nyeri. According to the facts, the certificate of grant in the first Succession Cause No. 77 of 1987 (Kerugoya) was issued to Francis Njeru Njine, who was also named as the beneficial owner of the two properties of the Estate of Njine Mwara being land parcel No. NGARIAMA/MERICHI/461 and plot No. 27 Kianyaga. In a Chamber Summons dated 27th March 2002, one Mary Kanini filed Miscellaneous Application No. 122/2002 seeking orders that the grant of letters of administration issued to Francis Njeru Njine on 21st June 1998 in RMCC Succession Cause No. 77 of 1977 be revoked. In a ruling delivered by Hon. Lady Justice Mary Kasango on 2nd October 2007, the Court allowed the said application and thereby revoked the grant of letters of administration issued to the said Francis Njeru Njine with costs. In the second Succession Cause No. 289 of 2009 (Embu), one Mary Kanini Njine and Jackson Kariuki Gikando were issued with certificate of confirmation in respect of the Estate of Njine Mwara and the suit property L.R. No. NGARIAMA/MERICHI/461 was sub-divided and shared among the following beneficiaries:-

1. Jackson Kariuki - 3 acres
2. Silvester Mwaniki - 2 acres
3. Edward Chomba - 2 acres
4. Sophia Wangigi - 2 acres
5. Francis Njeru - 2 acres
6. Ejidio Kabengi - 1 acre
7. Joyce Wambura - 1 acre
8. Faith Wanjira - 1 acre
9. Tabitha Wawira - 1 acre.

The initial registered owner namely Francis Njeru Njine pursuant to the confirmed grant in Succession Cause No. 77 of 1977 was cancelled and the Land Registrar effected the sub-division and registration of the new beneficiaries according to the subsequent Succession Cause No. 289 of 2009 (Embu) reflected as Entry No. 6, 7 and 8 respectively. On 10th February 2014, the Land Registrar vacated Entries No. 6, 7, and 8 pursuant to another Court order issued on 6th February 2014 vide Misc. Application No. 122 of 2002 (Nyeri) and reinstated Entry No. 3, 4 and 5 respectively. On 26th April 2019, Frida Gacheri Karimi and Stephen Ndegwa Mwangi were registered as absolute proprietors of L.R. No. NGARIAMA/MERICHI/461 and a title deed was issued the same date.

As I have observed elsewhere in this case which is a Miscellaneous Application filed by one Mary Kanini Njine for revocation of a grant issued to one Francis Njeru Njine in Succession Cause No. 77 of 1977 (Kerugoya) is purely a Succession Cause, the High Court and not the Environment and Land Court is seized with the requisite jurisdiction to conclude the matter. I also note that this being a Miscellaneous case and not a suit in the strict sense of the word, an equitable relief of injunction as sought cannot issue at an interlocutory stage since it is not a plaint where a permanent injunction can be sought. That was the reasoning in the case of *WINSTONE VS WINSTONE (1959) 3 All E.R. 580* where **Winn J.** stated as follows:-

“In my view, these words are to be construed and understood as limited to the granting of an injunction ancillary to and comprised within the scope of the substantive relief sought in the proceedings in which the application for injunction is made”.

I agree with the above decision. Given that the orders being sought in this application is interlocutory injunction and this matter being a Miscellaneous Application which no mechanism for a full hearing and there being no substantive prayer for a permanent injunction is envisaged, I am of the view that the Notice of Motion dated 9th July 2019 lack merit and the same is hereby dismissed. It is so ordered.

READ, DELIVERED and SIGNED in open Court at Kerugoya this 16th day of September, 2020.

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E.C. CHERONO

ELC JUDGE

In the presence of:-

1. *Mr. Ndegwa for Applicant – present*
2. *Respondents – absent*
3. *Mr. Mbogo, Court clerk – present*