



REPUBLIC OF KENYA

IN THE ENVIRONMENT LAND COURT OF KENYA

AT ELDORET

ENVIRONMENT LAND CASE NO.20 OF 2020

ELLY JEPKOECH LIMO.....PLAINTIFF

-VERSUS-

SUSAN WANGOI KIBE.....1ST DEFENDANT

SAMMY BOI CHESEREK.....2ND DEFENDANT

RULING

This ruling is in respect of an application dated 27th May 2020 by the plaintiff/applicant seeking for the following orders:

- a) Spent
- b) That the Honourable Court do issue an order of inhibition stopping further dealings, registration and transactions over that parcel of land known as IJASIN GISHU/KIMUMU/7968.
- c) That the Honourable Court be pleased to issue an order of status quo preserving the suit property, UASIN GISHU/KIMUMU/7968, pending the hearing of this application inter partes and main suit.
- d) That costs of this application be borne by the respondents.

The court granted interim orders and the parties agreed to canvass the application vide written submissions.

PLAINTIFF/APPLICANT'S SUBMISSIONS

Counsel for the applicant relied on the grounds on the face of the application together with the supporting affidavit and supplementary affidavit. It was counsel's submission that the applicant herein purchased the suit parcel of land known as UASIN GISHU/KIMUMU/7968 measuring 0.050HA on 4th June 2019 from the 1st Respondent who duly executed transfers and application to the Land Control Board in her favour. That the applicant later learnt that the suit parcel had been illegally and irregularly transferred to the 2nd Defendant without her consent and/or knowledge.

Mr. Kibii submitted that the applicant is apprehensive that the 2nd defendant/respondent may make real his threats of disposing off this property to the detriment of the applicant and render the suit nugatory and hence the need for conservatory and inhibition orders for preservation of the suit land.

Counsel relied on the case of **EMBU ELC CASE NO. 324 OF 2015 Dorcas Muthoni 2 Others...Vs...Michael Ireri Ngari (2016)eKLR**, where the court held that :-

"An order of inhibition issued under Section 68 of the Land Registration Act is similar to an order of prohibitory injunction which bars the registered owner of property under dispute from registering any transaction over the said property until further orders or until the suit in which the said property is a subject is disposed off. The Court issuing such an order must be satisfied that the applicant has good grounds to warrant the issuance of such an order because, like an interlocutory injunction, such an order preserves the property in dispute pending trial"

*Guided by the principle that the Court should always take the course that carries the lower risk of injustice **FILMS ROVER INTERNATIONAL & OTHERS VS CANNON FILMS SALES LTD 1986 3 ALL E.R 772** it is my view that the injustice that*

would be caused to the defendant/respondent if the plaintiff/applicants were granted the prayer of inhibition and later failed at the trial outweighs the injustice that would be caused to the plaintiff/applicants if the prayer for inhibition was dismissed and they succeed in proving their case. Balancing the two competing interests, the cause of justice will best be served if the order of inhibition is granted. "

Mr. Kibii further relied on the case of **Victoria Wangui Oganga Ogada v Mwangi Kihara 2 others [20181eKLR]** the Honourable Judge at paragraph 8 stated that;

"8. Pursuant to paragraph 32 of Gazette Notice No. 5178 titled "Practice

Directions on Proceedings in the Environment and Land Courts, and on Proceedings Relating to the Environment and the Use and Occupation of, and Title to Land and Proceedings in Other Courts", this court has jurisdiction to order maintenance of status quo so as to preserve the suit property pending hearing and determination of the main suit. The said paragraph provides:

During the inter-partes hearing of any interlocutory application, where appropriate, parties are encouraged to agree to maintain status quo. If they cannot agree, after considering the nature of the case or hearing both sides the Judge shall exercise discretion to order for status quo pending the hearing and determination of the suit bearing in mind the overriding interests of justice.

9. So as to preserve the suit property and to maintain status quo pending hearing and determination of the suit, I order that an inhibition be registered in respect of Nakuru Municipality Block 2/114 pending hearing and determination of this suit. Costs in the cause."

RESPONDENT'S SUBMISSIONS

Counsel for the respondent submitted that the applicants claim is based on an imperfect agreement as there was no consent of the Land Control Board which ought to have been obtained by 5th December 2019. Further that, as per the provisions of Section 6 of the Land Control Act, Cap 302 Laws of Kenya, the agreement is already null and void for all purposes.

Counsel submitted that the plaintiff's only remedy is a prayer for the refund of the purchase price as the Plaintiff/Applicant has herself to blame for her misfortunes as she did not carry out due diligence to ensure that she paid fully for the agreement and obtained the consent of the Land Control Board.

It was counsel's further submission that the 2nd defendant already holds title to the suit land and therefore the interest of the 2nd defendant has priority against the interest of the plaintiff. The 2nd defendants/respondents' interest is registered as against the unregistered interest of the plaintiff/applicant which cannot be defeated under Sections 25 and 26 of the Land Registration Act, 2012.

Lastly counsel submitted that the claim is within the jurisdiction of the Resident Magistrates court and hence should be transferred there. Counsel therefore urged the court to dismiss the plaintiff's case with costs.

ANALYSIS AND DETERMINATION

The issue for determination is as to whether the applicant is entitled to an order of inhibition to preserve the status of the suit land.

Section 68 of the Land Registration Act of 2012 provides as follows in section 68:

- (1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.
- (2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.
- (3) An inhibition shall not bind or affect the land, lease or charge until it has been registered. when there is good reason to preserve, or stay the registration of dealings, with respect to a particular parcel of land for a temporary period.

The applicant has demonstrated that she entered into an agreement with the respondent and it is also on record that the respondent subsequently sold the same suit land to the 2nd respondent without the knowledge of the applicant. It would be in the interest of justice to preserve the subject matter of the case The general principle that will apply is that the court exercises discretion judiciously and in good faith, for a proper purpose and take into account all relevant factors and is reasonable in the circumstances of the case in granting an order of inhibition.

The issue that the plaintiff bought the suit land is not denied save for the issue that a Land Control Board consent was not obtained. That is a matter that will be dealt with during the full trial. At this stage the court is dealing with whether to preserve the substratum of the case by way of an inhibition and maintenance of status quo.

On the issue of maintenance of status quo to preserve the property the court held in the case of **Joel Mugambi Mukira & 2 others (for and on behalf of Kimathi tenants welfare group) v County Government of Nyeri [20191eKLR]** that;

" In land matters the maintenance of status quo order is now literally synonymous with the proceedings. As was held by the Court of Appeal in the case of **Mugah -v- Kunga [1988] KLR 748**, in land matters status quo orders should always be issued for purposes of preserving the subject matter. The court's practice directions vide Gazette Notice No. 5178/2014 Practice direction No. 28(k) gives the court the leeway and discretion to make an order for status quo to be maintained until determination of the case."

Further in the case of in the case of **Joel Kipkurui Arap Koech V Alice Wambui Magandu 3 Others [2018]eKLR** the court held that;

"In that case, the court granted an injunction on the general principle that it is better to safeguard and maintain the status quo for a greater justice than to let the status quo be disrupted by not granting an interlocutory injunction and after hearing the case, find that a greater injustice has been occasioned.

The guiding principle of the overriding objective is that the Court should do justice to the parties before it and their interests must be put on scales.

Both the plaintiff and the I St Defendant are claiming the suit property. In my view, it is only fair to make orders that safeguard and maintain the status quo until the suit is heard and determined.

Having looked at the facts that have emerged in this case and the evidence adduced by way of affidavits, it is clear that the Plaintiff has established a prima facie case with a probability of success against the Defendants.

In my view, it is clear that the plaintiff has shown his right over the suit property. As regards irreparable damage, I take the view that should the suit land be alienated, the Plaintiff will have lost what he regards as his land and which may not be quantified in damages. The balance of convenience would tilt in favour of the plaintiff in order to safeguard the subject matter of the suit pending hearing and determination."

It should also be noted that despite the applicant being the first purchaser of the suit land, the 1st respondent transferred the same to the 2nd purchaser who is the 2nd respondent herein and who has commenced temporary constructions thereon.

I find that it would be in the interest of justice to order for an inhibition, restricting the registration of any disposition in the register of the land parcel Uasin Gishu/Kimumu/7968 until this suit is heard and determined. The application is therefore allowed as prayed with cost to the applicant.

DATED and DELIVERED at ELDORET this 15TH DAY OF October, 2020

DR. M. A. ODENY

JUDGE