



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

ENVIRONMENT & LAND CASE NO. 29 OF 2013

JANE NJERI IKIGU..... PLAINTIFF

VERSUS

TUWAN FARM LTD}

FRANCIS KEBENEI KIMATUI} DEFENDANTS

RULING

By Notice of Motion dated 13th March, 2013, the Applicant seeks the following orders:-

1. A temporary injunction restraining the 2nd Defendant/Respondent from entering into, disposing, selling, alienating, leasing, charging or in any way interfering the Plaintiff/Applicant's user and occupation of the land comprised in Title Nos. Kitale Municipality Block 2/Tuwan/635 and 636.
2. A temporary injunction restraining the 1st Defendant/Respondent from forwarding to the District Land Register Trans-Nzoia the name of any other person other than the Plaintiff/Applicant herein of the owner/allotee of Plot No. 633 and 634 in Tuwan Farm.

The Applicant contends that she is a member of the 1st Defendant company where she had been allocated six plots namely Plot Nos. 631, 632, 633, 634, 635 and 636 and a Share Certificate issued to that effect. She contends that she has been in possession of the six plots. When the 1st Defendant started processing titles for its members, she was given titles in respect of Plot Nos. 631 and 632. She noticed that the 2nd Defendant/Respondent had been issued with titles in respect of Plot Nos. 635 and 636. The 1st Defendant is yet to forward the names of allottee in respect of Plot Nos. 633 and 634. She therefore prays for orders that the 1st Respondent be restrained from forwarding to the Land Registrar Trans-Nzoia any other name apart from hers and also seeks to restrain the 2nd Defendant from either entering into, disposing, leasing, charging or in any other way interfering with the Plaintiff/Applicant's use of Plot Nos. 635 and 636.

The Applicant contends that the 2nd Respondent has twice tried to take from her the plots in issue vide Kitale HCCC No. 77 of 2002 and Kitale CMCC No. 347 of 2009 but the 2nd Respondent has ended up withdrawing the two cases.

The application is opposed by both the 1st and 2nd Respondents through their respective Replying Affidavits. The 2nd Respondent contends that he bought a plot measuring 100 X 200 feet from one Charles Kilel. The plots were later converted into plots measuring 7 X 27 metres. His portion yielded four plots of 7 X 27 metres each. The 1st Defendant forwarded names to the Land Registrar for issuance of the titles in respect of the plots. The 1st Respondent through one of its Directors Kennedy Bantereo Onsongo depones that the 2nd Defendant bought a plot measuring 100 X 200 feet from Charles Kilel in 1980. The plot is equivalent to four plots. He further depones that according to the records held by the

company, the Applicant bought a plot measuring 50 X 100 feet from Charles Kilel and that this plot is equivalent to two plots. He contends that there is no way the Applicant can get six plots which is way above what she bought.

I have carefully gone through the application by the Applicant as well as the responses by the two Respondents. The principles for granting a temporary injunction were well set out in the case of **Giella Vs Cassman Brown & Co. Ltd [1973] EA 358.**

“The principles are firstly, an Applicant must show a prima facie case with a probability of success. Secondly, an injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury and thirdly when the court is in doubt, it will decide the application on the balance of convenience”.

There is no contention that both the Applicant and the 2nd Respondent bought land from one Charles Kilel. The Applicant bought a plot measuring 50 X 100 feet. The 2nd Respondent bought a plot measuring 100 X 200 feet. When the first Defendant wanted to have each of its members issued with individual titles, the plots were converted to plots measuring 7 X 27 metres each. The Applicant was therefore entitled to two plots of 7 X 27 metres each out of her plot of 50 X 100. The 2nd Respondent was also entitled to four plots of 7 X 27 metres each out of his plot of 100 X 200 feet.

There is no way the Applicant's plot which was 50 x 100 will result in six plots of 7 x 27 metres. Simple conversion of a plot measuring 7 X 27 metres shows that it is 22 X 88 feet. A plot measuring 50 X 100 will therefore result into two such plots of 7 X 27 metres. The Applicant in her further affidavit has tried to justify the six plots by arguing that the 50 X 100 feet plot she bought was just an estimation. This is simply untenable. She also tries to argue that the 2nd Respondent may have bought land from a different seller. This is also not possible. The documents annexed to the Replying Affidavit shows that both the Applicant and the 2nd Respondent bought land from the same person. Both have annexed their respective Sale Agreements. The 1st Respondent has annexed a copy of an extract from the register kept by them showing that the Applicant's land was 50 X 100 feet and the Respondent's land was 100 X 200 feet. Though the Applicant has annexed a Share Certificate showing that she has six plots, this does not agree with what she bought and there is no way a plot of 50 x 100 can yield 6 plots measuring 7 X 27 metres.

The agreement of the Applicant shows that she bought a 50 X 100 feet plot on which lay one big house and two smaller ones. This is where her two plots of 7 X 27 metres should fall. She has already been given certificates of title in respect of Plot 632 and 631. This has covered her 50 X 100 plot. I find that the Applicant has no prima facie case with a probability of success. Her application fails and the same is hereby dismissed with costs to the Respondents.

It is so ordered.

Dated, signed and delivered in Open Court on this 2nd day of July, 2013.

E. OBAGA

JUDGE

In the presence of Mr. Kiarie for Applicant and Mr. Onyantha for Kaosa for Respondent.

Court Clerk: Joan.

E. OBAGA

JUDGE

02/07/2013