



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 928 OF 2016

SAMMY MACKENZIE MUKULA MULI.....PLAINTIFF/APPLICANT

=VERSUS=

NAPHTALI NYAGIAH KARANJA.....1ST DEFENDANT/RESPONDENT

KAMUINGI HOUSING CO.....2ND DEFENDANT/RESPONDENT

RULING

1. This is the Notice of Motion dated 29th July 2016 brought under order 40, rules 1, 2, 3, 4 and 9 of the Civil Procedure Rules Section 1A, 1B, 3A and 63 (e) of the Civil Procedure Act and all enabling provisions of the law.

2. It seeks order:-

(1) Spent

(2) Spent

(3) That an order of injunction do issue restraining the defendants by themselves, their servants and/or agents or any other representative whatsoever and/or otherwise howsoever from entering, trespassing, alienating and/or dealing with the plaintiff's parcel of land known as LR NO. 6824/69 Njiri Nairobi pending the hearing and determination of this suit.

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

3. The grounds are on the face of the application and are set out in paragraphs a to f. The application is supported by the affidavit of Sammy Mackenzie Mukula Muli the plaintiff/applicant sworn on the 29th July 2016 and supplementary affidavit sworn on the 23rd November 2016.

4. The application is opposed. There is a replying affidavit sworn by Naphtali Nyagiah Karanja, the 1st defendant/respondent sworn on the 29th August 2016. There is also a replying affidavit sworn by Benard Kariuki Mwangi, Chairman of the 2nd defendant/respondent sworn on the 28th August 2016.

5. On the 28th November 2016 the court directed that the Notice of Motion be canvassed by way of written submissions on the 19th December 2017, the defendant/respondent sought more time to file their submissions. I do not see the said submissions on record. It appears they did not file.

6. It is the plaintiff's/applicant's submissions that he is the beneficial owner of Land Parcel No. 6824/69 as shown by the allocation card. He took possession and has been paying rates for the said plot. That on 14th March 2016 he was informed that someone was digging trenches on the suit property. He went to the suit property and found the 1st defendant preparing the site for construction. He claimed to have bought the plot from the 2nd defendant/respondent.

7. He has relied on the cases of **Giella vs Cassman Brown & Co. Ltd [1073] EA 358; Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] KLR 125; Joseph Mbugua Gichanga vs Cooperative Bank of Kenya Ltd Civil Case No. 74 of 2000 and Central Bank of Kenya & Another vs Uhuru Highway Development Ltd Civil Appeal No. 92 of 1999.**

8. It is the plaintiff's/applicant's further submission that the 1st and 2nd defendant have fraudulently been selling the land purchased by members of the 2nd defendant after it subdivided the property into small plots. The plaintiff/applicant further submits that he is a member and shareholder of the 2nd defendant/respondent and was allocated Plot No. 6824/69. He has also relied on the cases of **Esther Ndegi Njiru & Another vs Leonard Gatei [2014] eKLR** and **Elijah Makeri vs Stephen Mungai Njuguna & Another [2013] eKLR**. He prays that the application be allowed.

9. I have considered the pleadings, the notice of motion, affidavit in support and the annexures. I have also considered the replying affidavit and the annexures. I have considered the written submissions of counsel and the authorities cited. The issues for determination are:-

(i) Whether or not the plaintiff/applicant's application meets the threshold for grant of temporary injunction.

(ii) Who should bear costs?

10. At this juncture, it is necessary to briefly examine the legal principles governing the applications of this nature. In an application for interlocutory injunction the onus is on the applicant to satisfy the court that it should grant an injunction. The principles were set out in the precedent case of **Giella vs Cassman Brown & Co Ltd [1973] 358**. In the case of **Mrao Limited vs First American Bank of Kenya Limited [2003] KLR 125**. The Court of Appeal stated what amounts to a prima facie case. I am guided by the above authorities.

11. It is the plaintiff's/applicant's case that he is the beneficial owner of Plot No. 6854/69. He has annexed a share certificate showing that he was allocated Plot No. 69. He has also annexed a letter from the 2nd defendant dated 20th November 1976 confirming that he was allocated Plot No. 6824/69 and a share certificate confirming that he was a member and shareholder of the 2nd defendant dated 30th March 1976. The plaintiff/applicant has also attached several receipts from the Nairobi City County showing that he has been paying rates for the said plot. I have considered the said annexures and I am convinced that the plaintiff/applicant was a member and shareholder of the 2nd defendant/respondent and was allocated Plot NO. 6824/69.

12. The 1st defendant/respondent on the other hand, has not adduced any evidence of how he was allocated the suit plot. He relies on a sale agreement between himself and one Dora Anam. I have perused the said sale agreements and I find that they do not contain the description of the property being conveyed. The said sale agreements are dated 7th July 1996 and 1st August 1996 respectively. This was way after the plaintiff/applicant has been allocated the said plot. The affidavit of Bernard Kariuki Mwangi seems to suggest that the 1st defendant bought the plot from one Dora Anam. He however fails to state who Dora Anam was and how she acquired the said plot. I am inclined to agree with the plaintiff's/applicant's submissions that the defendants/respondents have collude to deprive the plaintiff/applicant of his plot. However all this will come to light during the haring where evidence will be presented.

13. I am satisfied that the plaintiff/applicant has established a prima facie case with a probability of success at the trial.

14. In the case of **Kenleb Cons Ltd vs New Gatitu Service Station Ltd & Another 1990 KLR 557 Bosire J (as he then was)** held that:-

“to succeed in an application for injunction an applicant must not only make a frank and full disclosure of all relevant facts to the just determination of the application but must also show that he has a right, legal or equitable, which requires protection by injunction.”

I am satisfied that the plaintiff/applicant deserves this kind of protection. I am also satisfied by the facts presented by the plaintiff/applicant that there is need to preserve the suit property pending the hearing and determination of the suit.

15. I am also satisfied that the plaintiff/applicant has demonstrated that he will suffer irreparably if these orders are not granted. He is likely to lose the suit plot.

16. In conclusion I find that this application is merited and grant the orders sought namely:-

(a) That an order of temporary injunction do hereby issue restraining the defendants/respondents by themselves, their servants and/or agents or any other representative from entering, trespassing, alienating and/or dealing with the plaintiff's parcel of land known as L.R NO. 6824/69 Njiri, Nairobi pending the hearing and determination of this suit.

(b) That costs of this application do abide the outcome of the main suit.

It is so ordered.

Dated, signed and delivered in Nairobi on this 29TH day of JANUARY 2019.

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L. KOMINGOI

JUDGE

In the presence of:

.....Advocate for the Plaintiff

.....Advocate for the Defendants

.....Court Assistant