



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

PETITION. NO. 16 OF 2017

RUORA INVESTMENTS LIMITED.....PETITIONER

VERSUS

THE NATIONAL LAND COMMISSION

THE CHIEF LAND REGISTRAR

THE ATTORNEY GENERALRESPONDENTS

R U L I N G

1. By a Notice of Motion dated 19th December, 2017 the Petitioner/Applicant is seeking for orders that pending the hearing and determination of the application and the suit a temporary order of injunction to issue against the 1st and 2nd Respondents their servants and/or agents from revoking, cancelling, altering or in any way interfering with the Petitioner's **title No. LR.NO. MN/1/3270 CR/60269**.
2. The Application is based on the face of the motion and supported by the affidavit of John Mugo Njeru sworn on 20th December, 2017.
3. It is the Applicant's case that it is the legal and registered owner of **parcel LR.No.MN/1/3270 CR .60269 Mainland North** having purchased it from one Agostine Kariuki Kathae and a transfer was duly effected and registered on 22nd December, 2014.
4. The Applicant states that it has reliably been informed that the 1st Respondent is in the process of revoking its title. The Applicant avers that it has not been called to any meeting and/or hearing to determine the intended revocation and that the 1st Respondent is continuing with process without the Applicant's involvement.
5. It is the Applicant's contention that unless the 1st and 2nd Respondents are prevented by an order of the Court from interfering with the Applicant's title, the Applicant risks losing its property. The Applicant further contends that the 1st Respondent's actions are in breach of the Applicant's constitutional rights and therefore urged the Court to allow the Application.
6. The Application is opposed by the 1st Respondent through grounds of opposition dated 27th March 2018 and filed on 6th April 2018, namely:
 - i. The Petitioner has omitted to frame its case with reasonable precision as required under the High Court's pronouncement in the case of Anarita Karimi Njeru -v- The Republic (1976 - 1980) KLR 1272. The Petitioner fails the requirement as it does not state the alleged constitutional provisions violated by the 3rd Respondent and the acts or omissions complained of with reasonable precision.**
 - ii. The Application does not meet the threshold to warrant grant of injunctive relief.**
 - iii. The application is not founded on material facts backed by hard evidence but rather on needless tittle-tattle and rumour.**
 - iv. That the Application is scandalous, frivolous and vexatious and abuse of the Court's process.**
7. The Court gave directions and the parties agreed to canvass the Application by way of written submissions. In their submissions dated 12th July 2018 and filed on 18th July, 2018, the Applicant submitted that it has fulfilled the principles and the threshold for granting injunctive orders as laid down in the case of **Giella -v- Cassman Brown & Co. Ltd (1973) EA 358**.
8. The Applicant submitted that its Petition has probability of succeeding because it has demonstrated that it holds title and has shown proof

of ownership of the suit property. It is further submitted that the 1st and 2nd Respondents have not disputed the allegations made by the Applicant. It is the Applicant's submission that unless the orders sought are granted, it stands to lose its property and will suffer loss and damage as the title will already have been revoked.

9. The Applicant further submitted that granting the order of injunction will not prejudice the Respondents in any way. It added that the balance of convenience tilts in its favour as the registered owner of the suit property.

10. The 2nd and 3rd Respondents filed submission dated 16th July 2018 and filed n 28th July 2018. It is their submission that the Petition herein lacks merit for being unwarranted. The 2nd and 3rd Respondents further submitted that the petition is blatantly frivolous and a clear abuse of the Court process because the procedure followed by the Petitioner to realize his alleged rights of ownership in the suit property was unprocedural. They relied on the case of **Anarita Karimi Njeru –v- Republic (supra)**. It is their submission that the Petitioner has not specified in which manner as per the constitution as stated in paragraph 7 of the Petition to warrant the injunctive orders sought. The 2nd and 3rd Respondents submitted that the prayers sought are unmerited and that the application ought to be dismissed with costs to the Respondents.

11. I have considered the application herein. The main issue that I have to determine is whether the applicant has satisfied the grant of interlocutory injunction. The principles upon which interlocutory injunction may be granted are well settled and were laid down in the case of *Giella –v- Cassman Brown & Co. Ltd.* First, the Applicant must show that they have a prima facie case with a probability of success; secondly, that they stand to suffer irreparable damage; and if the court is in doubt, that the balance of convenience lies in their favour.

12. The Applicant has demonstrated that it is the registered owner of the suit property following the successful purchase of the property from previous registered owner, one Agostine Kariuki Kathae. The applicant has furnished a copy of the transfer from the previous registered owner to its name. The Applicant has also furnished a copy of the title in its name and a search certificate showing the property is still in its name.

13. From the evidence on record, I am satisfied that the applicant regularly and procedurally acquired the suit property. Any issue about the legality of the title in the applicant's name or that of the previous registered owner can only be challenged at the main hearing.

14. The Applicant under the provisions of Section 24 of the Land Registration Act became vested with the absolute ownership of the suit property and further under Section 25 of the Act the right of ownership acquired by the plaintiffs are indefeasible except as provided under the Act. Section 25(1) of the Land Registration Act provides as follows:

25. (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever but subject –

a. To the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

b. To such liabilities, rights and interests as affect the same and are declared by Section 28 not to require noting on the register, unless the contrary is expressed in the register.

15. The Applicant having been registered as proprietor and having been issued with the title document over the suit property is in terms of Section 26(1) of the Land Registration Act entitled to the protection of the Law.

16. It is my considered view that the Applicant has established a prima facie case with a probability of success. As regards irreparable damage, the conventional thought on land related matters is that deprivation of an interest in land is not sufficiently remediable by an order of compensation in damages. In addition, the effect of the refusal of the order injunction in this case is that the Applicant's title may be revoked or cancelled without following due process as stated by the applicant. I find such loss to be irreparable damage to the applicant. The balance of convenience if I had doubt in the matter, lies in favour of the Applicant who is the registered owner and lawfully acquired it from the previous registered owner.

17. Accordingly, I find merit in the application and grant the order for temporary injunction in terms of prayer 3 of the Notice of Motion dated 19th December, 2017.

18. The costs of the Application to abide the outcome of the Petition.

DATED, SIGNED and DELIVERED at MOMBASA this 15th day of January, 2019.

C. YANO

JUDGE

IN THE PRESENCE OF:

Ms. Nasimiya holding brief for Shimaka for Petitioner. Mbuthia for 1st Respondent,

Mwandenje for 2nd and 3rd Respondents.

Yumna Court Assistant.

C.K. YANO

JUDGE

15/1/19