



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 530 OF 2017**

**(Formerly Nairobi ELC No. 1292 of 2013)**

**HELEN NYOTE NKOITIKO (Suing as the administrator of the estate of  
MUTAI ENE NKOITIKO Deceased).....PLAINTIFF**

**VERSUS**

**KIMANKUSI OLE SITOYA MANGORI.....1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR KAJIADO.....2<sup>ND</sup> DEFENDANT**

**RULING**

What is before Court for determination is the Plaintiff's Notice of Motion dated the 5<sup>th</sup> August, 2016 brought pursuant to section 1A, 1B, Section 3A of the Civil Procedure Act and Order 40 rules 1 & 4 and Order 51 of the Civil Procedure Rules and all enabling provisions of the Law.

The application seeks injunctive orders and is premised on the grounds that the 1<sup>st</sup> Defendant with connivance and active assistance of the 2<sup>nd</sup> Defendant fraudulently transferred property belonging to the Plaintiff's deceased mother MUTAE ENE NKOITIKO to himself. The 1<sup>st</sup> Defendant has since commenced construction on the subject property KAJIADO/ KAPUTIEI CENTRAL/ 1826 despite the pendency of these proceedings.

The application is supported by the affidavit of HELLEN NYOTE NKOITIKO who is the Plaintiff herein where she reiterates her claim and avers that she initiated the instant suit on 29<sup>th</sup> October, 2013 seeking a declaration that the alleged sale, subdivision and transfer of land parcel number KAJIADO/ KAPUTIEI CENTRAL/ 949 is illegal and of no effect for want of Letters of Administration Intestate. She states that KAJIADO/ KAPUTIEI CENTRAL/ 1826 which was hived from the original KAJIADO/ KAPUTIEI CENTRAL/ 945 be cancelled and the property remains as part of the deceased estate. She explains that the 1<sup>st</sup> Defendant with connivance and assistance of the 2<sup>nd</sup> Defendant, subdivided and transferred the deceased's property and registered KAJIADO/ KAPUTIEI CENTRAL/ 1825 to herself and KAJIADO/ KAPUTIEI CENTRAL/ 1826 to himself. She reiterates that she has lost a substantial part of her inheritance owing to the Defendant's nefarious actions.

The application is opposed by the 1<sup>st</sup> Defendant KIMANKUSI OLE SITOYA MANGORI who deposes that he is the registered proprietor of land parcel number KAJIADO/ KAPUTIEI CENTRAL /1826. He states that sometime in 2004, he entered into a Sale Agreement with the Plaintiff for the purchase of 44 acres from land parcel number KAJIADO/ KAPUTIEI CENTRAL/ 949. Further, that at the time of the said Sale Agreement the original title KAJIADO/ KAPUTIEI CENTRAL/ 949 was in the name of the Plaintiff. He insists the Plaintiff and her sisters undertook subdivision, which resulted in three (3) portions. He explains that the Plaintiff registered parcel number KAJIADO/ KAPUTIEI CENTRAL/ 949 in her name; KAJIADO/ KAPUTIEI CENTRAL/ 948 in the name of KAMONON ENE NKOITIKO and KAJIADO/ KAPUTIEI CENTRAL/ 947 in the name of EMILY NTLALE NKOITIKO. He deposes that after payment of the purchase price, the Plaintiff refused to subdivide and/or transfer the said portion to his name. He contends that sometime in April 2010, he filed a reference at the Kajiado Land Disputes Tribunal being Ref. T.C No. 551/04/10 to enforce his rights but abandoned it. He avers that he paid the Plaintiff Kshs. 15, 000/= to remove the restriction that she had earlier registered and after subdivision the Plaintiff handed over to him the original title deed of KAJIADO/ KAPUTIEI CENTRAL/ 1826 together with the transfer duly signed, copies of her identity card, PIN Copy and her passport size photos for purposes of transfer. He reiterates that he obtained the title in his name on 5<sup>th</sup> November, 2010 and immediately took possession of the said land. Further, that the plaintiff has already registered a caution.

Both the Plaintiff and the 1<sup>st</sup> Defendant filed their submissions that I have considered.

**Analysis and Determination**

Upon perusal of the Notice of Motion dated the 5<sup>th</sup> August, 2016 together with the supporting and replying affidavits including the parties' submissions, the only issue for determination at this juncture, is whether the interim injunction sought by the Plaintiff ought to be granted pending the hearing and determination of the main suit.

Both the Plaintiff and the 1<sup>st</sup> Defendant are staking claim over the suit land. The Plaintiff claims the 1<sup>st</sup> Defendant obtained the title deed illegally as the transfer could not have been possible without letters of administration intestate. The 1<sup>st</sup> Defendant on the other hand contends that it is the Plaintiff who furnished him with the requisite documents to effect transfer of suit land in his name.

The principles for consideration in determining whether temporary injunction can be granted or not is well settled in the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358**.

In line with this principle, the Court will proceed to interrogate whether the applicant has made out a prima facie case with a probability of success at the trial.

In the first instance as to whether the applicant has demonstrated a prima facie case with probability of success, I note the 1<sup>st</sup> defendant has a title deed to the suit land, is in actual possession of the said land and commenced developments thereon. Looking at the documents presented by the Plaintiff and the 1<sup>st</sup> Defendant, it is clear that their respective claims are not baseless. The Plaintiff has not controverted the 1<sup>st</sup> Defendant's averments that she subdivided the land and sold the resultant subdivision which is the suit land to the 1<sup>st</sup> Defendant. However, the issues as to whether the transfer was regular or not, can only be best heard and determined at a full trial. The 1<sup>st</sup> Defendant however has not explained how he managed to register the transfer to himself without grant of letters of administration intestate. It is against the foregoing that I find that the Plaintiff has indeed established a prima facie case with a probability of success.

On the second principle as to whether the Plaintiff will suffer irreparable loss, which cannot be compensated by way of damages. Both the Plaintiff and 1<sup>st</sup> Defendant claim ownership over the suit land and it is not in dispute that the 1<sup>st</sup> Defendant is in actual occupation therein. In the instant case, I find that it would be pertinent if both the Plaintiff and the 1<sup>st</sup> Defendant are granted an opportunity to be heard to enable the court make a determination on the ownership of the suit land.

On the question of balance of convenience, from the evidence presented by the parties, I am not in doubt that if the title to the suit land is not preserved, it may be wasted away.

Since both the Plaintiff and the Defendant are staking claim over the suit land, with the sanctity of the title being in dispute and the 1<sup>st</sup> Defendant in occupation thereon, I find that these are issues best determined at a full trial, I will decline to grant the orders as sought but proceed to make the following order:

1. An inhibition order be and hereby registered by the Land Registrar Kajiado as against land parcel number KAJIADO/ KAPUTIEI CENTRAL/ 1826 of any dealings, lease or charge pending the hearing and determination of the suit.

2. Prevailing Status Quo be maintained pending the outcome of the Suit.

3. The costs will be in the cause.

The parties are urged to comply with Order 11 and set the suit down for hearing as soon as possible.

**Dated signed and delivered in open court at Kajiado this 6th day of March, 2019.**

**CHRISTINE OCHIENG**

**JUDGE**