



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 460 OF 2017

BENARD KIPRONO NGETICH (suing as the attorney of

WILSON KIPNGETICH ARAP ROTICH).....PLAINTIFF

VERSUS

GEOFREY KIPKURUI MISOI.....1ST DEFENDANT

PAUL KIET CHEPKWON.....2ND DEFENDANT

PAUL KIPSIELE KOECH.....3RD DEFENDANT

PHILIP KETER.....4TH DEFENDANT

RULING

1. This ruling is in respect of plaintiff's Notice of Motion dated 14th December 2017 pursuant to which the plaintiff seeks an injunction to restrain the defendants, their agents and/or servants from entering, cultivating and interfering with the plaintiff's parcel of land known as Molo South/Keringet Block 2/152 (Kirobon). The application is supported by an affidavit sworn by Bernard Kiprono Ngetich (hereinafter 'Bernard') who deposed that he holds a power of attorney from Wilson Kipngetich Arap Rotich (hereinafter 'Wilson'), the registered proprietor of Molo South/Keringet Block 2/152 (Kirobon), the suit property. He annexed a copy of the title deed and the power of attorney.

2. He further deposed that Wilson acquired the suit property by virtue of being a shareholder of Kirobon Farmers Company Limited and that the defendants forcefully entered the suit property in the year 2008, subdivided it and took possession of it. They then fraudulently obtained title deeds in respect of the 10 resulting subdivisions despite the fact that the deponent is still holding the title which is in Wilson's name. That on 9th December 2017, the defendants forcefully entered the suit property with the assistance of the local administration and started occupying it. He added that through a letter dated 12th April 2017, the district Land Registrar Nakuru confirmed that he had revoked the titles in respect of the 10 subdivisions. He thus urged the court to grant the orders sought.

3. The defendants opposed the application through a replying affidavit sworn by Paul Kipsiele Koech, the 3rd defendant. He stated that Bernard and Wilson are his neighbours and that a dispute that initially existed between him and the plaintiffs had been resolved. He denied that Wilson is the registered proprietor of the suit property. Instead, he asserted that Wilson owns another property known as Molo South/Keringet Block 2/24 (Kirobon). He denied the plaintiffs' allegation that they had forcefully entered the suit property or that they had obtained fraudulent titles. Regarding the alleged revocation of their titles by the registrar, he stated that the registrar cannot cancel any title without notice to and involvement of the registered proprietor. He stated that he is the registered proprietor of Molo South/Keringet Block 2/575 (Kirobon) while the 4th defendant is the proprietor of Molo South/Keringet Block 2/578 (Kirobon). He annexed a copy of the title deed for Molo South/Keringet Block 2/575 (Kirobon) as well as a certificate of official search in respect of the said parcel as at 14th December 2017. In respect of the 1st and 2nd respondents, he stated that they are not at all involved with the suit property and that they had been wrongly joined in the case. He thus urged the court to dismiss the application.

4. The application was heard by way of written submissions. The applicant's submissions were filed on 2nd October 2018 while the respondents' submissions were filed on 5th October 2018. I have carefully considered the application, the affidavits and the submissions.

5. The applicants seek an interlocutory injunction. They must therefore satisfy the test in **Giella -vs- Cassman Brown & Co. Ltd [1973] E.A 358**. This entails establishing a *prima facie* case with a probability of success. Even if a *prima facie* case is established, an injunction will not be issued if damages can be an adequate compensation. Finally, if the court is in doubt as to the answers to the above two tests then the court will determine the matter on a balance of convenience. As was recently held by the Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, all the three **Giella** conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially and that if *prima facie* case is not established, then irreparable injury and balance of

convenience need no consideration.

6. It is contended that Wilson is the registered proprietor of the suit property and that the defendants' titles have been fraudulently issued following an unauthorised subdivision of the suit property. If indeed the suit property has been subdivided and new titles issued then it no longer exists as Molo South/Keringet Block 2/152 (Kirobon) and it would be futile to issue any injunction in respect of it as is sought. That also raises serious doubt as to whether Wilson remains the registered proprietor of a parcel that technically no longer exists. Unfortunately, the applicants have not annexed any certificate of search in respect of the suit property to show who currently owns it.

7. While the applicants allege that the defendants' titles had been revoked by the land registrar as far back as 12th April 2017, I note that the 3rd defendant has annexed a copy of a certificate search signed by the very same land registrar which shows that he was the registered proprietor of Molo South/Keringet Block 2/575 (Kirobon) as at 14th December 2017, a day before the present application was filed. Needless to state, this seriously calls to question the applicants' allegation of revocation. In view of the foregoing, I am not persuaded that a prima facie case has been established. That being the case, I need not consider the aspect of irreparable injury and balance of convenience.

8. In the end, Notice of Motion dated 14th December 2017 is dismissed with costs to the defendants. Parties are urged to immediately set down the suit for hearing.

Dated, signed and delivered in open court at Nakuru this 30th day of May 2019.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Ombati for the plaintiff/applicant

No appearance for the defendants/respondents

Court Assistants: Beatrice & Lotkomoi