



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 104 OF 2018

THEODORE KIBITOK BOMETT..... PLAINTIFF

VERSUS

NANCY JERUTO..... 1ST DEFENDANT

LAND REGISTRAR.....2ND DEFENDANT

RULING

1. This ruling is in respect of plaintiff's Notice of Motion dated 6th March 2018. The following orders are sought in the application:

1. Spent

2. Spent

3. That the 2nd defendant be ordered to lift the restriction placed against LR No 10/8925795 now Lembus/Kisokon/65.

4. That pending hearing and determination of this suit inter partes this honourable court be pleased to compel the 1st defendant to surrender the land certificate of LR No 10/8925795 now Lembus/Kisokon/65.

5. That costs of the application be provided for.

2. The application is supported by an affidavit sworn by the plaintiff. He deposed that he is the last born son of Martha Kinoi Bomett (deceased) and the administrator of her estate. That the deceased wished that he inherits 50 acres of land parcel known as Lembus/Kisokon/65 (the suit property) and the balance be allocated to two other beneficiaries. That he got the suit property registered in his name but when he wanted to distribute it he found out that the defendant had a restriction had been registered against the suit property by the defendant. He thus urged the court to grant the orders sought.

3. The 1st defendant opposed the application through a replying affidavit. She contended that the plaintiff obtained registration of the suit property in his name through fraud since she still holds the original title and that in any case there is a pending application for revocation of the grant which the plaintiff is holding.

4. The application was heard by way of written submissions. The applicant's submissions were filed on 4th July 2018 while the 1st respondent's submissions were filed on 30th November 2018. The 2nd respondent did not respond to the application and did not participate in its hearing. The plaintiff argued that he had satisfied the test laid down in **Giella vs Cassman Brown** for granting an injunction. He therefore urged the court to allow the application. On her part the 1st defendant argued that the plaintiff had not satisfied the test for granting a mandatory injunction and thus urged the court to dismiss the application. I have carefully considered the application, the affidavits and the submissions.

5. The applicant seeks mandatory injunctions at an interlocutory stage. The principles applicable are well settled and were recently restated by the Court of Appeal in the case of **Tom Onyango v Mimosa Investments Limited [2017] eKLR** as follows:

[11] The principles for granting mandatory injunctions at an interlocutory stage are not in dispute. It is the application of those principles in the context of the case which is in contention As the authorities cited by the respective counsel show, a mandatory injunction may be granted on an interlocutory application as well as at the hearing but in the absence of special circumstances, it will not be normally granted. It may be granted in clear cases where, inter alia, the court is satisfied that the matter ought to be decided at once or where the circumstances are such that the court is satisfied that the case is unusually strong and clear. In exceptional cases, the court has discretion to grant an interim relief although it amounts to granting the final relief itself prayed

in the suit.

6. Thus a litigant seeking such an injunction must demonstrate special circumstances that present a clear case that for instance calls for an immediate determination. Alternatively, the applicant must present a case that is unusually strong and clear. I have anxiously considered the case presented by the applicant herein. I have not seen any special circumstances that require an immediate determination without going to a full hearing. Equally, taking into account the issues raised by the 1st defendant as to the circumstances in which the plaintiff obtained grant of letters of administration and title to the suit property, I am unable to decipher any unusually strong and clear case. If anything, the circumstances herein call for the respective cases to be tested at a hearing where oral testimony is taken. The plaintiff himself seems to anticipate that since he has sought the very same prayers in the plaint.

7. In view of the foregoing, I find no merit in Notice of Motion dated 6th March 2018. It is dismissed with costs to the 1st defendant.

Dated, signed and delivered in open court at Nakuru this 8th day of May 2019.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Cheche holding brief for Ms Nancy Njoroge for the plaintiff/applicant

Mr Maina holding brief for Mr Kimatta for the 1st defendant/respondent

No appearance for the 2nd defendant/respondent

Court Assistants: Beatrice & Lotkomoi