



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
LAND CASE NO. 23 OF 2019

LAVIN ADHIAMBO OGADA

(Suing as personal representative of the Estate of the late

ISAAC OCHIENG' OGADA (Deceased).....PLAINTIFF

VERSUS

DANIEL OKOTH OGADA.....1ST DEFENDANT

SANTU AISHA.....2ND DEFENDANT

TUWAN FARM LIMITED.....3RD DEFENDANT

LAND REGISTRAR TRANS-NZOIA COUNTY....4TH DEFENDANT

THE HON. ATTORNEY GENERAL.....5TH DEFENDANT

RULING

1. The Notice of Motion dated 15/3/2019 and filed on the same date seeks the following principal orders:

(a) ...spent

(b) ...spent

(c) That the court be pleased to grant a temporary injunction restraining the defendants whether by themselves, agents and/or servants from dealing, interfering, alienating, selling and/or otherwise disposing of the suit property being land parcel No. Kitale Municipality Block 2/4966 (formerly Plot No. 5034 on subdivision) measuring 0.033 Ha or thereabouts situate in Trans-Nzoia county within the Republic of Kenya pending hearing and the determination of this suit.

(d)

(e)

2. The Notice of Motion is founded on the grounds set out at the foot of the application and in the supporting affidavit of the plaintiff sworn on even date. These are that Isaac Ochieng Ogada the plaintiff's late father purchased the suit land but passed on before he could acquire title after which event the 1st respondent fraudulent caused the suit land to be registered in his name whilst the plaintiff, Isaac's only heir-apparent, was still a minor. It is the plaintiff's case that the suit property is at the risk of being alienated and she may suffer irreparable loss in that event.

3. The 3rd defendant opposes the plaintiff application 15/3/2019 on the grounds that the plaintiff's application is bad in law, untenable and an abuse of the court's process; that the 3rd defendant has no beneficial interest in the suit land and has no power to convey the suit property to third parties; that the 3rd defendant is not the registered owner of the suit land and does not occupy and/or possess the land in question and that the orders sought against the 3rd defendant cannot be obtained.

4. The 2nd defendant filed a replying affidavit dated 29/4/2019. She opposes the motion dated 15/3/2019 on the basis that she is the purchaser

for value of the suit land who since 2017 has occupied the same peacefully and that no evidence has been tendered that she intends to dispose of the same; that since she resides on the suit land she cannot be held to be in trespass and an order of injunction against her would be improper. She maintains that the proper procedure was followed in the registration of the land in her name as the proprietor and therefore there is no fraud or illegality on which the plaintiff's claim can be based.

5. The 1st defendant filed a replying affidavit dated **29/4/2019** and responded to the application dated **15/3/2019**. He states that there is no evidence of likelihood of disposal of the land; that prior to the death of Isaac Ogada he used to live with the deceased who gave him the plot as a gift in the year 2011 while the plot was still vacant and he has substantially developed the land by erecting houses thereon with knowledge of one Eric Otieno Ogada and there was no fraud or illegality.

6. This court ordered the parties to file their submissions on 30/4/2019. However only the plaintiff filed submissions on 31/5/2019.

7. I have perused the application and the responses of the 1st, 2nd and 3rd defendant. I find that this case involves alleged fraud. The deceased Isaac Ochieng, according to limited grant of letters of administration issued to the plaintiff on 13/3/2019, died on 30/9/2011. Documents show that the plaintiff was born on 30/5/1999; the sale agreement between the plaintiff's father and the original seller one **Stephen Kipkilel A. Sitonik** has been exhibited in the supporting affidavit of the plaintiff. No documents in support of the defendants' defence are exhibited in their own affidavits to support the allegations that first the plaintiff's father gave the land to the 1st defendant as a gift and two that the same was legally transferred to the 2nd defendant without fraud. I find that not even letters of administration of the deceased are shown to have been taken out by the 1st defendant to enable him claim validity of any transaction over the land in his favour. In my view the plaintiff has established a prima facie case with a probability of success.

8. As to whether she will suffer irreparable loss in damages it is noteworthy that the 2nd defendant claims to be in possession, of the land an allegation not denied by the plaintiff. The plaintiff not being in possession, it is necessary that the prayers that she seeks be allowed for the purpose of only safeguarding the suit land from disposal.

9. For that reason I grant the application dated 15/3/2019 to the extent that a temporary injunction is hereby issued against the defendants restraining them or their agents from charging or disposing of the suit land pending the hearing and determination of this suit. Costs of the application will be in the cause.

Dated, signed and delivered at Kitale on this 31st day of July, 2019.

MWANGI NJOROGE

JUDGE

31/7/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Collins

Mr. Nyamu holding brief for Kagunza for plaintiff

N/A for the 1st defendant

Mr. Odongo for 4th and 5th defendants

N/A for 2nd and 3rd defendants

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

31/7/2019