



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MOMBASA

ELC CASE NO. 100 OF 2019

LAWRENCE NGIYO KARIUKI.....PLAINTIFF

VERSUS

ABDULAZIZ BALALA

THE COMMISSIONER OF LANDS

THE REGISTRAR OF TITLES..... DEFENDANTS

RULING

(Application for injunction; plaintiff demonstrating that he was allotted the suit land and title was registered in his name; there having been a transfer to the 1st defendant which transfer the plaintiff contends to be a forgery; 1st defendant not filing anything to oppose the application; application not opposed by the 2nd and 3rd defendants; prima facie case established; application allowed)

1. This suit was commenced through a plaint which was filed on 12 June 2019. In the plaint, the plaintiff has pleaded that on 26 January 1981, he was allotted an unsurveyed Plot No. 57-Nyali which plot was later surveyed and given the land reference number 3953/1/MN. A title was prepared in the year 1986 and registered in his favour in the Mombasa Land Registry as No. CR 17951/10 but the original title was never forwarded to the plaintiff by the Commissioner of Lands or Registrar of Titles. It is averred that on 19 July 2005, the 1st defendant fraudulently obtained the original title to the suit land. The plaintiff avers that he became aware of the acquisition when he went to visit the land and found a concrete fence erected. The plaintiff reported to the Nyali Police Station and in the course of investigations, he was shown a sale agreement purportedly signed by him and a transfer instrument dated 8 July 2005, purporting that he has sold the land to the 1st defendant at the sum of Kshs 2,400,000/=. The plaintiff denies ever selling the suit land and contends that the signatures in the sale agreement and transfer are forgeries. He further contends that the identity card used in the transfer is not his. In the suit, the plaintiff wishes to have a declaration that he is the bona fide proprietor of the suit land and a permanent injunction to restrain the 1st defendant from the said land. He also wishes to have the title of the 1st defendant cancelled and a certificate of title to be issued in his favour. Alternatively, he seeks compensation of Kshs. 25,000,000/= for fraudulent deprivation of the land.

2. Alongside the plaint, the plaintiff filed an application principally seeking orders to restrain the 1st defendant from trespassing and dealing with the land, and to stop the registration of any disposition on the land. It is that application which is the subject of this ruling. The supporting affidavit has been sworn by the plaintiff and he has inter alia annexed copies of the allotment letter dated 26 January 1981 and the sale agreement dated 8 July 2005 which he contends to be a forgery.

3. The 1st defendant was served through an advertisement in the newspaper as his whereabouts could not be traced but he has not entered appearance nor has he filed any document in this case. The State Law Office, appearing for the 2nd and 3rd defendants did not oppose this motion.

4. I have considered the application. The plaintiff has displayed his allotment letter to the suit land and has also demonstrated that he reported to the police who have been investigating the matter. He refutes having transferred the suit land to the 1st defendant. I am persuaded that the plaintiff has demonstrated a prima facie case with a probability of success and it is clear that if the property is dealt with, he may suffer irreparable loss. I therefore order as follows :-

(i) That pending the hearing and determination of this case, the 1st defendant is hereby barred from entering into any sale, charge, lease, or any other disposition over the land parcel 3953/1/MN.

(ii) That pending the hearing and determination of this case, an order of inhibition is hereby issued, barring the registration of any

disposition in the register of the land parcel 3953/I/MN.

(iii) That the 1st defendant and/or his servants/agents or anybody acting on his behalf, are hereby barred from making any developments on the land parcel 3953/I/MN or in any other way altering the character of that land, until this case is heard and determined.

(iv) The plaintiff will have the costs of this application.

5. Orders accordingly.

DATED, SIGNED and DELIVERED at MOMBASA this 23rd day of October 2019.

MUNYAO SILA

JUDGE.

IN THE PRESENCE OF:

Ms. Kiragu for the plaintiff/applicant.

Mr Makuto for the 2nd 7 3rd defendants/respondents.

No appearance for the 1st defendant/respondent.

Court assistant; Koitamet.