



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 672 OF 2017

FRANCIS MWANGI CHEGE.....1ST PLAINTIFF

HENRY MAINA GACHUGUMA2ND PLAINTIFF

FRANCIS NJENGA.....3RD PLAINTIFF

SAMMY K. KIBUNJA.....4TH PLAINTIFF

JAMES MWANGI MUGURO.....5TH PLAINTIFF

VERSUS

BERNARD WAWERU GITAU.....1ST DEFENDANT

JOSEPH MUGO KANGETHE2ND DEFENDANT

LEAH WANGUI KANGETHE.....3RD DEFENDANT

RULING

The application in Court for determination is a Notice of Motion dated the 25th April, 2017 brought pursuant to Order 40 rules 1, 2 and 10 of the Civil Procedure Rules. It is based on the grounds which in summary is that the Plaintiffs are genuine shareholders of New Roysambu Housing Company Limited, which is a land buying company. Plaintiff's were allocated plots BLOCK E registered as KAJIADO/KITENGELA/2038 hereinafter referred to as the 'suit land' and the Defendants are selling the plots to other parties. Attempts to seek clarification from the Defendants by the Applicants have been met with hostility and threats of violence.

Application is supported by the affidavit of FRANCIS MWANGI CHEGE the 1st Plaintiff herein where he deposes that together with the fellow Plaintiffs, they were issued with Share Certificates and each Plaintiff shown their respective plot numbers namely; 370 E, 262E, 197 E, 210 E and 218 E respectively. He avers that upon conducting a search at the Company Registry to confirm who the Directors of the Defendants were, they found the names of the said Directors different and they are not sure who they are. He confirms that it is the Respondents who are responsible for the day to day operations of Roysambu Housing Company Limited and have no right to sell the plots, the Plaintiffs had been allocated.

The application is opposed by the Defendants who filed a replying affidavit sworn by the 2nd Defendant JOSEPH MUGO KANGETHE who confirms that the Plaintiffs are shareholders of New Roysambu Housing Company Limited. He states that the New Roysambu Housing Company Limited purchased the

suit land but denies that the Plaintiffs were shown their plots as enumerated above. He insists there is no change of directorship of the New Roysambu Housing Company Limited and denies John Irungu Huma and James Wangige Ngunjiri have ever been directors. He avers that John Irungu Huma and James Wangige Ngunjiri were directors of New Roysambu Cooperative Society. He confirms that the Defendants are in charge of the day to day operations of New Roysambu Cooperative Society but deny that they are currently selling plots allocated to the Plaintiffs. He reaffirms that the Applicants plots were genuinely obtained and are in existence, with each Plaintiff's plot measuring 15 metres by 20 metres respectively. He reiterates that the company is willing to show the Plaintiffs their respective plots and no evidence has been tabled by them to warrant the orders sought. He reaffirms that damages will be an adequate remedy for the Plaintiffs instead of the injunctive orders sought.

Both parties filed their respective written submissions that I have considered.

Analysis and Determination

Upon perusal of the Notice of Motion application dated the 25th April, 2017 together with the supporting affidavit, the replying affidavits and the parties' submissions, at this juncture the only issue for determination is whether the interim injunction sought by the Plaintiffs ought to be granted pending the outcome of the main suit.

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** as follows:

"First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience."

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

In the first instance as to whether the applicants have demonstrated a prima facie case with probability of success, it is the Plaintiffs' contention that the Defendants are selling the suit plots that had been allocated to them as members of the New Roysambu Housing Society Limited. The Plaintiffs aver that they paid for the respective plots and were shown the same.

The Defendants do not deny that the Plaintiffs paid for their plots. I find that the Plaintiffs have indeed established a prima facie case with a probability of success.

On the issue as whether the Plaintiffs will suffer irreparable harm which cannot be compensated by way of damages, it is not in dispute that the Plaintiffs bought the suit land and were shown the same. Plaintiffs are apprehensive the Defendants will sell the plots. The Defendants aver that they are ready to transfer plots to the Plaintiffs.

I find that the Plaintiffs will suffer irreparable harm since they had already paid for the plots and are yet to get them.

On the issue of balance of convenience, I find that the balance indeed tilts in favour of the Plaintiffs as opposed to the Defendants if the orders sought are not granted.

It is against the foregoing that I find the Plaintiffs application dated the 25th April, 2017 merited and allow it in the following terms:

- a) An inhibition order be and hereby registered by the Land Registrar Kajiado as against land parcel number BLOCK E registered as KAJIADO/KITENGELA/2038 of any dealings, lease or charge

pending the hearing and determination of the suit.

b) The costs of the application is awarded to the Plaintiff.

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 5th day of February, 2018

CHRISTINE OCHIENG

JUDGE

Present:

Cc Mpoye

Mbaka for Plaintiff

N/A for Defendant