



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**CASE NO. 223 OF 2017**

**JAMES ANTHONY MWANGI.....PLAINTIFF**

**VERSUS**

**DORCAS JEPKORIR CHALAGAT.....1<sup>ST</sup> DEFENDANT**

**OLIVER KIPCHOGE KIPLAGAT (Acting as the personal**

**Representative of the estate of the late JOHN CHALAGAT**

**CHEPTOO).....2<sup>ND</sup> DEFENDANT**

**PETER KIMELI KIPLAGAT (Acting as the personal**

**Representative of the estate of the late JOHN CHELAGAT**

**CHEPTOO).....3<sup>RD</sup> DEFENDANT**

**RULING**

1. The plaintiff herein filed this suit on 24<sup>th</sup> May 2017 against Dorcas Jepkorir Chelagat, the defendant. Through plaint dated 24<sup>th</sup> May 2017, he sought judgment for the following:

- a. A declaration that the plaintiff is the legal owner of all that parcel of land known as Nakuru Municipality Block 1/1394.**
- b. A permanent injunction be issued against the defendant, her servants, agents, employees and/or any other person or persons acting on her instructions from trespassing, entering, occupying or in any manner dealing with all that parcel of land known as Nakuru Municipality Block 1/1394.**
- c. Costs of this suit be awarded to the plaintiff.**

2. Subsequently, by consent recorded only in court on 1<sup>st</sup> November 2017, Oliver Kipchoge Kiplagat and Peter Kimeli Kiplagat were joined to the suit as 2<sup>nd</sup> and 3<sup>rd</sup> defendants respectively and the plaintiff was granted leave to amend the plaint to reflect the changes. As at the date of delivery of this ruling, no amended plaint is on record.

3. Pursuant to the consent recorded on 1<sup>st</sup> November 2017, the 1<sup>st</sup> defendant's amended defence and counterclaim which was filed on 30<sup>th</sup> October 2017 was deemed to be properly on record. In the counterclaim, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants pray among others that a declaration be issued that the parcel of land known as **Nakuru Municipality Block 1/1394** is property of the estate of John Chelagat Cheptoo – deceased.

4. Alongside the initial plaint, the plaintiff filed Notice of Motion dated 24<sup>th</sup> May 2017 in which he sought the following orders:

**1. Spent.**

**2. Spent.**

**3. That pending the hearing and determination of the suit, this honourable court be pleased to issue a temporary injunction restraining the defendant, her servants, agents, employees and/or any other person or person acting on her own instruction**

**from selling, disposing, using, transferring and/or in any manner dealing with land known as Nakuru Municipality Block 1/1394 to the detriment of the plaintiff's proprietary rights.**

**4. That costs of this application be provided for.**

5. The application is supported by an affidavit sworn by the plaintiff. He deposed that he is the registered proprietor of the parcel of land known as **Nakuru Municipality Block 1/1394** (the suit property). He annexed a copy of the Certificate of Lease as well as a copy of Certificate of Search as at 11<sup>th</sup> May 2017. He further deposed that when he went to the property in the year 2014 he was met by hostility and upon investigations, he discovered that the 1<sup>st</sup> defendant was behind the hostility.

6. The plaintiff also stated that the 1<sup>st</sup> defendant insisted that the property belonged to him "without as much as providing evidence as to how they acquired possession." He further deposed that the 1<sup>st</sup> defendant's "use and occupation" of the suit property is a culmination of an illegality and fraud.

7. The defendants have opposed the application through the 1<sup>st</sup> defendant's replying affidavit sworn on 15<sup>th</sup> September 2017 and the 2<sup>nd</sup> defendant's replying affidavit sworn on 30<sup>th</sup> October 2017. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants are the administrators of the estate of John Chelagat Cheptoo (deceased) while the 1<sup>st</sup> defendant is the wife of the 2<sup>nd</sup> defendant. The defendants do not deny that the plaintiff has a Certificate of Title in respect of the suit property. They however contend that the title was obtained fraudulently. They assert that the 1<sup>st</sup> defendant is in occupation of the suit property.

8. The application was argued by written submissions. The plaintiff/applicant filed submissions on 24<sup>th</sup> November 2017 while the defendants filed submissions on 8<sup>th</sup> December 2017. I have considered the application, the affidavits filed as well as the submissions.

9. There is no dispute that the 1<sup>st</sup> defendant is in possession of the suit property. This is manifest from the averments at paragraphs 5, 9, 11 and 13 of the plaint and paragraphs 10 and 13 of the affidavit in support of the application.

10. There are accusations that the plaintiff obtained title to the suit property fraudulently. Though under **Section 26** of the **Land Registration Act** the court is bound to accept the title as conclusive proof proprietorship, the said section allows for challenge of a registered proprietor's title on grounds of fraud, misrepresentation or illegal or unprocedural acquisition. All these are matters that would have to be proven at the trial.

11. Pursuant to paragraph 32 of **Gazette Notice No. 5178** titled "**Practice Directions on Proceedings in the Environment and Land Courts, and on Proceedings Relating to the Environment and the Use and Occupation of, and Title to Land and Proceedings in Other Courts**", this court has jurisdiction to order maintenance of status quo. The said paragraph states:

**During the inter-partes hearing of any interlocutory application, where appropriate, parties are encouraged to agree to maintain status quo. If they cannot agree, after considering the nature of the case or hearing both sides the Judge shall exercise discretion to order for status quo pending the hearing and determination of the suit bearing in mind the overriding interests of justice.**

12. In the circumstances of this case, I consider that the best way forward is to order maintenance of status quo pending hearing and determination of the suit.

13. In the circumstances, I order that:

a. the status quo in respect of **Nakuru Municipality Block 1/1394** shall be maintained pending hearing and determination of the suit. The 1<sup>st</sup> defendant shall remain in possession but shall not carry out any new developments.

b. No party shall make any dispositions or carry out any developments in respect of **Nakuru Municipality Block 1/1394** pending hearing and determination of this suit.

c. Costs of the application shall be in the cause.

14. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 13<sup>th</sup> day of March 2018.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr. Kamau for the plaintiff/applicant.

Ms. Kipkoech holding brief for Mr. Kigamwa for the defendant/respondent.

