



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 164 OF 2016

ABRAHAM KAMAKIL

HELLEN KAMAKIL..... PLAINTIFFS

VERSUS

KIPTURGO AMDENY..... DEFENDANT

RULING

1. The application dated 14/11/2016 seeks an order of temporary injunction to restrain the defendant from disposing of or in any manner interfering with the plaintiff's interest in **LR. No. Trans-Nzoia/Kaisagat/Ainasit/20** pending the hearing and determination of the suit.
2. The grounds upon which the application is made are contained at the foot of the application and in the two supporting affidavits of the two plaintiffs sworn on 14/11/2016. They are that the defendant is threatening to sell the suit land without the plaintiffs' consent despite having sold the plaintiff's the land in the year 2002 and the plaintiff having paid the consideration in full and taking possession thereof, has built thereon a dwelling house and is utilizing the same to date.
3. The application is brought under **Order 40 Rules 2 and 4(1) of the Civil Procedure Rules, section 1A, 1B, 3A and 63(e) of the Civil Procedure Act.**
4. The defendant opposed the application through his sworn affidavit dated 11/3/2017 and filed in court on 14/3/2017. He denies the alleged sale of the suit land to the 1st plaintiff and terms the agreements as forgeries in respect of which he has made a complaint to the police for investigations, and that this suit was filed after the lodging of his complaints.
5. The defendant avers that the plaintiffs took advantage of his being far from the farm and started leasing his land and subsequently to sell the same to strangers. He denies ever having given the plaintiffs "express authority" to sell or lease the land to anyone.
6. The plaintiff filed submissions on his application on 3/7/2017 and the defendant on 2/2/2018. The plaintiff relies on the case of **Charles Alex Njoroje -vs- National bank of Kenya Ltd and Another [2015] eKLR** and **Jan Bolden Nielsen -vs- Herman Phillipus Steyn alias Hermannus Phillipus Steyn & 2 Others [2012] ECLR.**
7. In an application of this nature the court requires to find on the issues of whether the plaintiff has established a prima facie case, whether he would suffer irreparable injury were the orders denied, and finally if none of the above are established the court decides the application on the basis of the balance of convenience in the matter.

8. As to whether a prima facie case has been established, I find that the land is registered in the defendant's name but also that the plaintiffs have been in occupation thereof for probably for as long as they assert and that they have extensively developed part of it and even sold part thereof to a third party. The plaintiffs rely on the agreements they have annexed. These are in the form of acknowledgements of receipt of the purchase price in instalments by the defendant and his son. These the defendant disputes but he has failed to prove that he has reported to the police for their investigation.

9. For the moment the possessory rights of the plaintiffs exist and cannot be ignored. An investigation as to how the plaintiffs came to be on the land for so long is vital for the determination of the suit. I find that the plaintiff has established a prima facie case.

10. Further, if the plaintiffs were to be evicted from the said land, without a chance to argue their case, their developments on the said land may be gravely prejudiced. In my view it is necessary to preserve the status quo. I find that the two main limbs of the test in **Giella -vs- Cassman Brown 1973 EA 358** have been established by the plaintiff and I therefore grant the application dated 14/11/2016 in terms of **prayer No. (b)** and I further order that the costs of the application shall be in the cause.

It is so ordered.

Dated, signed and delivered at Kitale on this 20th day of April, 2018.

MWANGI NJOROGE

JUDGE

20/4/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the Applicant

N/A for the Respondent

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

20/4/2018