



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 3 OF 2018

RONGETIA MANGUT.....PLAINTIFF

VERSUS

PHILIP NGORIAMUNYAN.....DEFENDANT

R U L I N G

1. The plaintiff's application dated 12/1/2018 in this suit seeks an order of temporary injunction to restrain the defendant from interfering with the plaintiff's land parcel No. **West Pokot/Keringet A/302** pending the hearing and determination of this suit.

2. The application is supported by the sworn affidavit of the plaintiff dated 12/1/2018. The grounds upon which it is made are that the land is registered in the name of the plaintiff yet the defendant has erected structures thereon and secretly buried the remains of his deceased father-in-law thereon, thus depriving the plaintiff of the right to use and enjoy his property. The plaintiff though avers that he is in possession of the suit land and an injunction should issue to stop the defendant from any further activity on the said land.

3. The defendant opposed the application by filing his sworn affidavit dated 26/1/2018 and a notice of preliminary objection of the same date. In these documents the defendant avers that the suit land belonged to one Rongetia Magut and Koparapara Chepokaptul, as proprietors in common in equal undivided shares and by the time the latter co-proprietor died, she had distributed her share amongst her surviving daughters who subsequently sold the land to several persons, the defendant included. He avers that he bought a one acre portion of the land from one Miriam Chematunda and another one acre portion from Chepkogh Kyotum and exhibits sale agreements for the two parcels dated 21/3/2007 and 22/12/2005 respectively. He avers that he has occupied the parcels and developed them extensively. He discovered that the plaintiff had caused the whole land to be transferred to himself recently, that is, after the year 2014, and accuses the plaintiff of fraud.

4. The defendant has brought to the notice of this court a pending case between one of the sellers, Chepogh Kyotum and the plaintiff in which the seller seeks the plaintiff's title to be cancelled, that is **Kitale ELC No. 26 of 2016**.

5. Parties urged both the application and the preliminary objection together. The defendant filed submissions on the application on 14/2/2018 and the plaintiff filed his submissions and supplementary submissions on 13/2/2018 and 19/2/2018 respectively.

6. It is not in doubt that the plaintiff is the registered proprietor of the suit land. A copy of his title is annexed to the further affidavit dated 13/2/2018 which is in the record. The question that arise for determination are as follows:-

(1) Is the suit Res Subjudice?

(2) Is the plaintiff guilty of non-disclosure?

(3) Should the injunction sought issue?

(1) Is the suit Res Subjudice?

7. On this issue I have examined the record and found that the claim between the plaintiff and the Chepogh Kyotum that is **Kitale ELC No. 26 of 2016** is an entirely different matter between different parties and on different questions. This matter is therefore not Res Subjudice **Kitale ELC No. 26 of 2016. (2) Is the Plaintiff guilty of non-disclosure?**

8. In the light of the finding in respect of issues No.1 above, it is difficult to find that the plaintiff is guilty of any material non-disclosure. In any event, I find that if the defendant knew of the said pending suit, he was also at liberty to cause himself to be enjoined in the proceedings. The plaintiff herein is not the plaintiff in that matter and blaming him for non-disclosure would be unfair.

(3) Should the injunction sought issue?

9. The plaintiff is the registered owner. This is a matter in which much acrimony may arise in view of the disclosure that there were other buyers besides the defendant. It is incumbent upon this court to preserve the subject matter of a suit especially where registration has already been effected and in which rights, on the face of it, may have accrued to a registered owner, pending the proof of fraud or illegal acquisition of the property which proof may lead to an ultimate order of cancellation of title. At the moment I find that if the status of the land is altered and later on it transpires that the plaintiff is the successful party in this litigation much harm may be occasioned to many other persons.

10. I therefore find it necessary to issue the orders sought in order to preserve the status of the suit property pending hearing and determination of this suit. Accordingly I find that the plaintiff's application dated 12/1/2018 has merit. The Preliminary Objection dated 26/1/2018 has no merit and the same is dismissed. I however grant prayer **No. (b)** of the application dated 12/1/2018 pending the hearing and determination of the main suit. Costs shall be in the cause.

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

Mr. Barongo holding brief for Lowasikou for Applicant

Ms. Mufutu for the Respondent

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

20/4/2018