



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO.674 OF 2017

MARY NYAKINYUA MURICHU.....PLAINTIFF

=VERSUS=

NICHOLAS MAONGA GISEMBA.....DEFENDANT

RULING.

1. The Plaintiff/Applicant filed a Notice of Motion dated 23rd October 2017 in which she sought the following orders.

1. Spent

2. Spent

3. That an injunction be issued restraining the defendant/ respondent whether by himself, servants and/or agents or whosoever is acting on his behalf against entering into, developing, constructing, occupying, trespassing, disposing or in any other way from interfering with in the plaintiff/ applicant's occupation, possession and ownership of all that parcel of land known as plot Kiambu Dandora No.1272 on LR No.11379/3 (Zone 13) situate in Umoja III pending the hearing and determination of this suit.

4. That this Honourable Court do issue any other orders it deems fit.

5. That costs of this application be met by the defendant/ respondent.

2. The applicant contends that in the year 2012, she purchased plot No.1272 comprised in LR No. 11379/3 from Kiambu Dandora farmers Company Limited. She was duly given a share certificate and was shown the physical location of the plot. She took possession and constructed a perimeter fence around the plot. In 2017 she sold the plot to a third party. When the third party went to take possession, he found the respondent who claimed that the plot was his.

3. The third party went and reported the incident to the police who upon investigations arrested the applicant and charged her with the offence of obtaining money by false pretences. However since the matter was a land dispute, she was given time to negotiate with the third party and sort out the issue. She now prays for injunction to protect her plot and avoid being arraigned in Court for an offence she did not commit.

4. The respondent opposed the application based on a replying affidavit sworn on 15th November 2017. The respondent states that he bought plot No.622 from one Joyce Mbula Musyoka on 1st September 2010. The said Joyce Mbula Musyoka had purchased the plot from Umoja III Housing Scheme. The respondent processed all transfer documents and his name was placed on the records of Umoja III Housing Scheme. He was put in possession after which he built a perimeter fence. In 2017, the applicant attempted to sell the plot to an innocent third party who caused her to be arrested.

5. The respondent denies the applicant's allegations that she is the one who fenced the plot. He denies the applicant's allegation that he entered the suit property in September 2017. In response to the respondent's response, the applicant filed a further affidavit in which she contends that the plot which the respondent claims to be plot No.622 is actually plot No.1272 which later changed to plot No. 25 . She contends that if the respondent is maintaining that his plot is No.622, then he is claiming a wrong plot. She maintains that the respondent gained access to the plot by demolishing part of the perimeter fence and that he has since continued to put up a building on the plot.

6. I have considered the applicant's application as well as the opposition to the same by the respondent. I have also considered the submissions by the applicant. The respondent did not file any submissions at least by the time I was writing this ruling. This being an application for injunction, I have to decide whether the applicant has demonstrated that she has a prima facie case to warrant issuance of an

injunction.

7. One of the principles for grant of an injunction is that an applicant has to demonstrate that's she has a prima facie case with probability of success. As was stated in the case of **Mr Rao Vs First American Bank of Kenya Ltd**, a prima facie case in a civil application is one on which based on the materials placed before the court, the court can reach a conclusion that the applicant's rights have been infringed as to call for an explanation from the respondent.

8. In the instant case , the parties herein seem to be litigating on the same plot on the ground but each party has given the plot a different number and the plot seems to have been purchased from different, vendors whose origin is a land buying company and an housing scheme. I have looked at the documents annexed to the applicant's application. Whereas she states that she bought the plot in 2012, other documents show that she got consent to purchase the plot on 12th November 2013. In the year 2012, she made two payments for regularization of the plot in issue. A beacon certificate is said to have been issued on 2nd July 2013.

9. When she tried to sell the plot in issue to a third party, the third party tried to gain possession but found that the respondent was claiming ownership. The third party complained against her. She was arrested and charged for obtaining money through false pretences. She was spared arraignment in Court because she was given time to sort out the issue with the third party. The applicant claims that she had purchased about 10 plots from Kiambu Dandora Farmers Company Limited. There is no evidence of such purchase not even for the disputed plot. From the documents availed, it is clear that the applicant has not demonstrated that she has a prima facie case to warrant issuance of an injunction.

10. Even if the Court were to consider the issue of damages, there is nothing to show that the respondent will not be in a position to pay in the event it is found that the plot belongs to her. It is the respondent who is in possession. Even if the court were to consider the balance of convenience, the balance will tilt in favour of the respondent. I therefore do not find any merit in the applicant's application which is hereby dismissed with costs to the respondent.

It is so ordered

Dated, Signed and delivered at Nairobi on this 24th day of May 2018.

E.O.OBAGA

JUDGE

In the absence of:-

Mr Mogoi for Respondent

M/s Chepngeno for M/s Mutemi for applicant

Court Assistant: Kevin

E.O.OBAGA

JUDGE