



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CIVIL APPEAL NO. 653 OF 2017

(Formerly Machakos ELC Case No. 260 of 2014)

MEREINA TEKETI MUNENE.....APPELLANT

VERSUS

LEKENKE OLE TEKETI.....RESPONDENT

RULING

The application before Court for determination is dated the 18th December, 2014 brought pursuant to order 40 rule 2 and 51 rule 1 of the Civil Procedure Rules, Sections 1A, 1B, 3A of the Civil Procedure Act, Section 68 of the Land Registration Act, Section 3, 13, 18 and 19 of the Environment and Land Court Act 2011 and all the other enabling provisions of the law.

The Applicant seeks injunctive orders against the Respondent, including registration of an inhibition over land reference number KAJIADO/DALALEKUTUK/ 7116 pending the outcome of the Appeal. The application is premised on the following grounds:

- a) The Applicant is the Respondent's step mother.
- b) That an agreement dated the 30th May, 2013 to resolve a family land inheritance dispute was signed by the parties herein as well as TEKETI OLE MUNENE the Applicant's husband and the Respondent's father.
- c) That the Respondent transferred 86 acres of land to the Applicant but refused as well as neglected to subdivide land reference number KAJIADO/ DALALEKUTUK/7116 and transfer 25 acres to the Applicant as agreed.
- d) That the Applicant commenced legal proceedings before the Principal Magistrate Court in Kajiado under Civil Suit No. 293 of 2013.
- e) That on 3rd December, 2014, the Hon. Mary A. Ochieng, Principal Magistrates' Court of Kenya at Kajiado, ruled in favour of the Respondent and dismissed the suit.
- f) The Applicant has filed a Memorandum of Appeal dated the 15th December, 2014.
- g) That the Respondent is in the process of transferring the suit property which would render the Appeal being nugatory unless the orders sought herein are allowed by this Honourable Court.

The application is supported by the affidavit of MEREINA TEKETI MUNENE the Applicant herein where she reiterates her claim and states that she lived with her husband including her family on land reference number KAJIADO/DALALEKUTUK/ 1169 which is approximately 111.28 hectares. She claims she was not blessed with any children but took care of her stepchildren including the Respondent and that on 16th May, 2003, together with her husband, they adopted SIKORET TEKETI MUNENE at birth. She avers that her husband was also a member of Sajiloni Group Ranch and upon its dissolution, he gave the Respondent his share in the said ranch and on subdivision the Respondent was registered as the proprietor of land reference number KAJIADO/ DALALEKUTUK/ 3381 measuring approximately 14.43 hectares, which she had no problem with. She contends that in 2003 she was forced to flee her matrimonial home due to violence, hostility as well as harassment from her husband including the Respondent and she was forced to pay rent at Kiserian while depending on her beadwork for livelihood. She claims on 18th November, 2011 her husband transferred land reference number KAJIADO/DALALEKUTUK/1169 measuring approximately 111.28 hectares, where their matrimonial home was situate to the Respondent, while disinheriting the minor SIKORET TEKETI MUNENE including herself. She sought intervention of the elders culminating in their entering into an agreement dated the 30th May, 2013 where the parties agreed that the Respondent was to transfer 25 acres from land reference number KAJIADO/ DALALEKUTUK/ 7116 to the Applicant. She deposes that the Respondent is in breach of the aforementioned agreement as he had refused and neglected to transfer the said 25 acres to her culminating in her commencing legal proceedings vide Kajiado Principal Magistrate Civil

Case No. 293 of 2013, which suit was dismissed on 3rd December, 2014. She confirms filing a Memorandum of Appeal dated the 15th December, 2014 against the said Judgement but fears the Respondent is in the process of disposing of the suit land before the Appeal is heard and determined.

The Respondent LEKENKE OLE TEKETI opposed the application and filed a replying affidavit where he deposed that the application is incompetent, bad in law and an abuse of the court process. He contends that there was no adoption of SIKORET TEKETI MUNENE but admits the Applicant resided with her family on land reference number KAJIADO/ DALALEKUTUK/1169 and that his father gave him land reference number KAJIADO/DALALEKUTUK/3381. He denies that the Applicant was forced out of the matrimonial home but left on her own free will. Further, that the issue of disinheritance does not arise as the said land reference number KAJIADO/ DALALEKUTUK/ 1169 was subdivided and the Applicant issued with title deed KAJIADO/ DALALEKUTUK/17118 measuring 86 acres, which is a very big chunk of land. He denies being a party to any agreements and that the Applicant was not present nor signed the said agreement, thus it is void ab initio. He admits the suit was dismissed and states that no irreparable loss will be occasioned by the Applicant if the application is dismissed.

Both parties filed their respective submissions and on 14th November, 2017, the Applicant's Counsel highlighted their submissions where she reiterated their claim and stated that they had established a prima facie case to warrant the orders of injunction sought. She relied on the following judicial authorities to support her arguments: **Kenya Hotels Limited Vs Kenya Commercial Bank Limited & 2 others, HCCC No 8 of 2004 (unreported); Giella Vs Cassman Brown Limited (1973) EA 358; Mrao Vs First American Bank of Kenya Limited & 2 others (2003) KLR 125** and section 68 of the **Land Registration Act**. The Defendant submitted that the Applicant's application does not meet the threshold of granting a temporary injunction as she has failed to establish a prima facie case and no prejudice will be occasioned upon her.

Analysis and Determination

Upon perusal of the materials presented in respect of the Notice of Motion dated the 18th December, 2014 including the supporting and replying affidavits as well as the written submissions, the only issue for determination is whether the Applicant is entitled to orders of temporary injunction sought pending the outcome of the Appeal.

I note the Applicant filed a Memorandum of Appeal dated the 15th December, 2014 challenging the judgment of the Principal Magistrate Mary Ochieng where she dismissed her suit in which she was claiming 25 acres of land reference number KAJIADO/ DALALEKUTUK/7116 as had been agreed upon vide an agreement dated the 30th May, 2013. The Applicant's main contention is that the Respondent is registered as the proprietor of the said parcel of land and she is apprehensive that he might dispose of it pending the Appeal, which Appeal.

The principles for granting an injunction are well established in the case of **Giella Vs Casman Brown (1973) E.A 358** and the Court held 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."

While in the case of **MRAO VS FIRST AMERICAN BANK OF KENYA LTD & TWO OTHERS C.A CIVIL APPEAL No. 39 of 2002 (2003) K.L.R 125** the Court described a prima facie case as follows:

".... is a case which, on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter".

Section 68 (1) of the Land Registration Act provides that: **'(1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.'**

While order 42 rule 6(6) of the Civil Procedure Rules provides:

"Notwithstanding anything contained in sub-rule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from the subordinate court or tribunal has been complied with."

I note that the Applicant only seeks a temporary injunction and registration of an inhibition order pending the outcome of the Appeal where she is claiming 25 acres of the said land reference number KAJIADO/ DALALEKUTUK/ 7116. The nature of these orders sought by the Applicant are discretionary. In the case of **Charter house Bank Limited v Central Bank of Kenya & others [2007] eKLR** the Court of Appeal held as follows on granting orders of temporary injunctions pending appeal:

"the purpose of granting an injunction pending appeal is to preserve the status quo and to prevent the appeal, if successful, from being rendered nugatory.'

While in the case of **Bilha Mideva Buluku v Everlyne Kanyere [2016] eKLR**, Justice C. Mwitia stated that: **' In considering whether or not to grant an injunction pending appeal, the court while trying to ascertain if appeal is arguable, or put differently whether the appeal, raises serious questions for determination, the court does not have to go deeply into the appeal itself. It must bear in mind that the**

appeal is yet to be heard and avoid making comments that may prejudice the trial of the appeal itself. The court should only consider the grounds raised in the memorandum of appeal vis a vis the impugned decision and form its own opinion whether there is an arguable appeal to warrant the status quo being maintained.'

In applying the various legal provisions including the judicial authorities cited above to the current scenario, I find that the Applicant's appeal is arguable as she seeks implementation of an agreement they had entered into in regards to a dispute over family land with her stepson. I find that the Applicant will indeed be prejudiced if the share of the suit land she is seeking is disposed off before the Appeal is heard, and this can render the Appeal nugatory. Since the Respondent is already registered as the proprietor of land reference number KAJIADO/ DALALEKUTUK/ 7116, I see no prejudice he will suffer if an inhibition order is registered against the said title pending the outcome of the Appeal. In the circumstances, I find that the Applicant has indeed established a prima facie case to warrant the grant of the orders sought.

I will proceed to make the following order:

'An inhibition order be and is hereby registered by the Land Registrar Kajiado as against land parcel number KAJIADO/ DALALEKUTUK/ 7116 of any dealings, lease, subdivision, transfer or charge pending the hearing and determination of the Appeal.'

'The costs will be in the cause.'

Dated signed and delivered in open court at Kajiado this 24th day of May, 2018.

CHRISTINE OCHIENG

JUDGE