



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 437 OF 2017

BAKARI SHABAN GAKEREPLAINTIFF

VS

MWANA IDD GUCHU 1ST DEFENDANT

THE COUNTY GOVERNMENT OF

MURANG'A2ND DEFENDANT

THE NATIONAL LAND COMMISSION 3RD DEFENDANT

THE HON. ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. By a Plaintiff dated 24/8/17 and filed on 25/8/17 the Plaintiff filed suit against the Defendant's seeking the following orders;

- a) A declaration that the Plaintiff is the rightful owner of Plot No. Mjini/69 located within Mjini area Murang'a County measuring 200ft by 100ft.
- b) A revocation of the purported sub-division of plot No. Mjini/69 and subsequently cancellation of the allocation of Plot No. Mjini/69 to the 1st Defendant.
- c) A permanent injunction restraining the Defendant, their agents, servants, employees and/or any other person claiming to act with the authority of any of the Defendants from entering, demarcating, sub dividing, destroying property or in any other way interfering with Plot No.Mjini/69.
- d) Costs of the suit with interest.

2. Simultaneously he filed a Notice of Motion on even date seeking the orders as thus;

- a) That this matter be certified as extremely urgent and service be dispensed with in the first instance under the High Court vacation rules.
- b) That a temporary injunction do issue preventing the Defendants whether by themselves, their agents, servants, employees and/or any other persons claiming to act with the authority of any of the Defendants from entering, alienating, sub-dividing, destroying property, disposing or in any other way interfering with Plot No. Mjini/69 located within Mjini area, Murang'a Town in Murang'a County pending the hearing interparties of this application.
- c) That a temporary injunction do issue preventing the Defendants whether by themselves, their agents, servants, employees and/or any other persons claiming to act with the authority of any of the Defendants from entering, alienating, sub-dividing, destroying property, disposing or in any other way interfering with Plot No. Mjini/69 located within Mjini area, Murang'a Town in Murang'a County pending the hearing and determination of the main suit.
- d) That due to the urgency of this application this Honourable Court do grant leave to the Plaintiff to file this suit notwithstanding that the 30 days' notice has been served upon the 4th Defendant pursuant to the government proceedings Act Cap 40 laws of Kenya.

e) That the cost of this application be borne by the Defendants.

3. The application is supported by the grounds set out and supported by affidavit of the Applicant dated 24/8/17. In it the Applicant depones that he is the rightful owner of Plot No. 69 since 1982 having purchased it from one Ibrahim Mohammed. That he has been paying rent to the Murang'a County Government under the name of Ibrahim Mohammed for Plot Nos. 68 & 69 like other plot owners in Mjini area. He explained that though he is the owner of Plot No. 69 he has been paying rates under Plot No. 68. Equally the owner of Plot No. 70 has been paying rates under Plot No. 69. That the problem is rampant with the plots at Mjini area.
4. That to rectify the problem, the Mjini Plot owners Committee sponsored a bill at the County Assembly of Murang'a on 24/9/15 to have the area resurveyed, beacons placed and new land reference numbers given without interfering with occupation of the residences and/or depriving them of their lands. That National Land Commission and Murang'a County Government were to oversee the exercise/implementation.
5. That later he realized that his plot had been fraudulently subdivided and a new plot No. 69 allocated to the 1st Defendant. That as a result of the action of the 2nd and 3rd Defendants he has been deprived of his land. He accused the 1st, 2nd and 3rd Defendants for working in cohorts to grab his land. That his plot is fenced and is situate at the corner, that is to say a corner plot. He has attached various proceedings at the County Assembly as well as minutes of Mjini plot owners committee that engaged and discussed the issue of plot realignment and correction, planning and reissuing of new numbers, surveying and new allotments to the existing Plot owners of Mjini area in Murang'a Town.
6. The 1st Defendant/Respondent opposed the application and stated that he was the legal owner of Plot No. 180 near Mumbi Girls High School. That in 1982 the plot owners next to the school were allocated alternative plots in Makadara area of Mjini estate to pave way for the expansion of the school. It is then that he was allocated Plot No. 69 which he took possession and built a canteen.
7. That the Applicant is using his position as a committee member of Mjini Plot owners Committee to stake a claim on plot No. 69. That indeed the 1st Respondent has had a dispute over the plot with one Marcella Nyambura. That the Applicant has not made any complaint to the committee over the plot as he is aware the committee would dismiss it.
8. He deponed further that Ibrahim Mohamed did not own the plot. That Ibrahim Mohamed died in 2001 and the Plaintiff only transferred the Plot No. 68 to himself on 26/7/16. That the said transfer was fraudulent.
9. Further she deposed that the Applicant had obtained letters of confirmation of grant in the estate of Ibrahim Mohammed by fraud. That he filed Succession cause for Ibrahim Mohammed. That the Thika Court has confirmed in writing that succession Cause No. 148 of 2009 does not involve the estate of Ibrahim Mohammed. It relates to that of Kiarie Karu alias Kiarie Karuu (deceased). That the Applicant used forged documents to fraudulently transfer plot No. 68 to himself.
10. That the basis of the Applicants claim on Plot No. 69 is illegal. That he is not entitled to Plot No. 69.
11. The 3rd Respondent opposed the application and filed grounds of opposition as follows; the Applicant is not the registered proprietor of Plot No. 69; application is brought in bad faith as the Applicant seeks to paralyze the Constitutional and Statutory mandate of the 2nd and 3rd Respondents in regularizing the land issues in Mjini area at the behest of the residents of the area; Applicant has not satisfied the minimum threshold required for grant of injunction order.
12. In response to the 1st Respondents averments the Applicant interalia states as follows; it is unclear how the 1st Respondent transferred land from 180 to 69 while the County Assembly bill had stated that no land owner would be affected; that he succeeded Ibrahim Mohammed who died in 2007 in accordance with Sheria Law that allows a close friend to succeed where the deceased leaves no surviving children and/or relative; he is a bonafide purchaser of plot No. 69 having purchased the land from Ibrahim Mohammed in 1995; that he also bought the house in 1997 at Kshs. 2000/= from Ibrahim Mohammed; contended that 1st Respondent still lives at Plot 180; confirmed that plots near Mumbi Girls School ceased to exist to pave way for expansion of school; relocating the 1st Respondent to his plot No. 69 is a clear attempt by 1st -3rd Respondents from depriving him of his plot No. 69.
13. The 2nd Respondent opposed the application on the grounds interalia; the 2nd Defendant established an owners committee to sort out ownership of plots within Mjini area and the Plaintiff did not claim ownership of the plot despite being the secretary of the said Mjini Plot Owners Committee; the dispute between the plot No. 69 and 70 is between the Marcella Nyambura Macharia and Mwana IDD and not the Plaintiff; an injunction at this stage would be prejudicial.
14. Parties elected to canvass the application by way of written submissions which I have read and carefully considered.
15. The principles of granting an interim injunction were set out in the case of **Giella vs Cassman Brown and Co. Ltd (1973) EA 358** which are: that firstly, 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, and thirdly, if the Court is in doubt, it will decide an application on a balance of convenience.
16. In the case of **Mrao vs First American Bank of Kenya Ltd & Two Others C.A. No. 39 OF 2002 (2003 eK.L.R)** the Court defined a prima facie case in the following terms;

“A prima facie case in a civil application include but is not confined to a genuine and arguable case. It 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”.

17. Has the Applicant established a prima facie case with a probability of success: The Applicant has laid claim on Plot No. 69 as a purchaser for value without notice from one Ibrahim Mohammed in 1995. He attached a document christened agreement of sale which refers to plot No. 45 and not plot No. 69. Further the letter of confirmation of grant issued on 27/11/2009 in Succession case No. 148/2009 in the estate of Ibrahim Mohammed alias Gatembo Mohammed deceased issued to him have been challenged on its authenticity vide a letter dated 27/9/17. The Principle Executive Officer Thika Law Courts wrote and stated that Succession Cause No. 148 of 2009 refers to the estate of Kiarie Karu alias Kiari Karu deceased and not Ibrahim Mohammed. I have perused the said grant which distributed Plot No. 68 Mjini to the Applicant and not plot No. 69 as he alleges. This casts doubt on the Applicant’s averment that he purchased the Plot No. 69 from one Ibrahim Mohammed.

18. It is on record that in accordance to rates receipts for Plot Nos 68 and 69 the plots are registered in the name of the Applicant and Marcella Nyambura Macharia respectively. It is on record that the Applicant did not register any claim with Mjini Plot owners committee for resolution. The 1st and 3rd Respondents have made averments which have not been controverted by the Applicant that the disputes were in respect to plot Nos 69 & 70 between Marcella Nyambura and the 1st Respondent which disputes were resolved amicably.

19. From the record, the Applicant has annexed a letter of allotment dated 9/6/17 in his name by the National Land Commission allotting him plot Murang’a Municipality Block 1/173. In her submissions the 1st Respondent submitted that the old Plot No for 68 (now 173). That plot No 69 was renamed plot No. 174. This averment was not controverted by the Applicant. The Court takes this evidence to be consistent to the rates payment receipt which indicated that the Applicant’s plot is No. 68. It is also stated in the confirmed grant referred to earlier. No Prima facie case has been proved by the Applicant. The application fails in respect to the 1st limb.

20. As to whether the Applicant might suffer irreparable injury which cannot be adequately compensated by an award of damages, the Applicant has not laid any evidence of least at the prima facie stage to guide the Court. Having assessed the evidence, the Court does not find any irreparable injury that may be suffered by the Applicant that cannot be compensated by damages. It is on record that the Applicant has been allocated plot No. 173 as evidenced by letter of allotment dated the 9/6/17. The 2nd Respondent and the Mjini Town plot owners gave assurances to the residents that no genuine owner will lose this plot. In any event these properties are capable of being valued should compensation be determined and required.

21. Is the Court in doubt? The answer is in the negative. The balance of convenience tilts in declining to issue the interlocutory injunction for the reasons adduced above.

22. The upshot of the ruling is that the Plaintiffs application is not meritorious. It is dismissed with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MURANG’A THIS 12TH DAY OF JULY 2018

J G KEMEI

JUDGE

Judgment read in open Court in the presence of;

Ms Okello for the Plaintiff

Abdillahi Ali (P/A) for the 1st Defendant

2nd Defendant

3rd Defendant Absent

4th Defendant

Ms. Irene and Ms Njeri, Court clerks.