



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 450 OF 2017

JAMES MWANGI KARANJA.....PLAINTIFF

VERSUS

MURIITHI KIBOGO KIMAGO.....1ST DEFENDANT

TIMOTHY MATHENGE MWANGI.....2ND DEFENDANT

AYUB NJUGUNA.....3RD DEFENDANT

RULING

1. This is a ruling in respect of plaintiff's Notice of Motion dated 26th November 2017. The application is brought inter alia under the provisions of Order 40 rule 1 of the Civil Procedure Rules. The following orders are sought:

(i) Spent.

(ii) Spent.

(iii) That this honourable court be pleased to grant an order of permanent and/or temporary injunction against the defendants/respondents herein either by themselves, their agents, employees and/or servants from trespassing, entering, subdividing, allocating, occupying, selling, leasing, charging in any way with the plaintiff's/applicant's piece of land known as Gilgil/Karunga Block 9/1524, 9/1528, 9/1919 and 9/1921 pending the hearing and determination of the main suit.

(iv) That a copy of the order extracted hereof be served upon the OCS Gilgil police station for effective compliance.

(v) That costs of this application be provided for.

2. The application is supported by an affidavit sworn by the plaintiff. The plaintiff deposed that he is the registered proprietor of parcels of land known as Gilgil/Karunga Block 9/1524 (Ol Burgel), Gilgil/Karunga Block 9/1528 (Ol Burgel), Gilgil/Karunga Block 9/1919 (Ol Burgel) and Gilgil Karunga Block 9/1921 (Ol Burgel) collectively referred to hereafter as the suit properties. He has annexed copies of title deeds for all the suit properties as well as certificates of official searches as at 28th September 2017 in respect of all the suit properties save for plot No. 1921.

3. The plaintiff further deposed that he acquired the suit properties by virtue of being a member of Rumuruti Farmers Company Ltd and that the 3rd defendant entered into the suit properties and subdivided them into new plot numbers being plot number 777, 778 and 828. The 3rd defendant has proceeded to allocate the new plots to the 1st and 2nd defendants as well as other unknown third parties. The plaintiff thus urges the court to grant the orders sought.

4. When the application came up for inter parte hearing, the plaintiff provided satisfactory evidence that the defendants had been served.

There being no appearance for the defendants and there being no response filed by the defendants, counsel for the plaintiff urged the court to allow the application.

5. I have considered the application. On the basis of the evidence placed before the court, I am satisfied that the plaintiff is the registered proprietor of the suit properties.

6. Though the plaintiff has not tendered any formal evidence of subdivision of the suit properties, for example through mutation forms, I am

persuaded on the basis of the uncontroverted evidence of the plaintiff, that the suit properties are at risk of being interfered with either through trespass, subdivision or occupation by the defendants or third parties. In the circumstances, I am persuaded that the plaintiff has a prima facie case with a probability of success. I do not think that damages would adequately compensate him.

7. Among the orders sought is one that the extracted order herein be served upon the OCS Gilgil Police Station for effective compliance.

8. In the end, I grant an injunction restraining the defendants, their agents, employees, and/or servants from trespassing upon, entering, subdividing, allocating, occupying, selling, leasing, charging, transferring or in any other manner dealing with the parcels of land known as Gilgil/Karunga Block 9/1524 (Ol Burgel), Gilgil/Karunga Block 9/1528 (Ol Burgel), Gilgil/Karunga Block 9/1919 (Ol Burgel) and Gilgil Karunga Block 9/1921 (Ol Burgel) pending hearing and determination of this suit. Costs of the application are awarded to the plaintiff.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 27th day of September 2018.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the plaintiff/applicant

No appearance for the defendants/respondents

Court Assistant: Gichaba