



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CIVIL APPEAL NO. 24 OF 2014

JOSEPH MITHIKA LAIRANGI.....APPELLANT

VERSUS

PIMAS MUGAMBI MAINGI.....RESPONDENT

JUDGMENT

Appeal from the decision of Hon. Gichimu Ag. P.M. Delivered on 15th July, 2014 in P.M.C.C. No. 77 of 2013 (Tigania)

BACKGROUND

The gist of this appeal is the ruling of the learned magistrate Hon. Gichimu, Ag. Principal Magistrate in P.M.C.C. No. 77 Tigania. The decision allowed an order of injunction restraining the defendant who is the Appellant in this appeal from barring and/or denying the plaintiff, his family members and/or workers by means of violence or threat of violence, access to land parcel No. 4058 Akanga Adjudication Section or in any way interfering with the plaintiff's proprietary rights over land parcel No. 4058 Akanga adjudication Section pending the hearing and determination of this suit.

Aggrieved by that decision, the defendant/appellant filed the current appeal on the following eight (8) grounds:

- 1. That the learned magistrate erred in law and fact in granting the respondent an order of temporary injunction which has the effect of enriching the appellant from the suit at an interlocutory stage.**
- 2. That the learned trial magistrate erred in law and fact in granting an order of temporary injunction which has the effect of a mandatory injunction when no mandatory order of injunction had been sought by the respondent.**
- 3. That the learned trial magistrate erred in law and fact in ignoring the fact that the balance of convenience tilted and still tilts in favour of the appellant who is still in possession of the suit land.**
- 4. That the learned trial magistrate erred in law and fact in failing to appreciate the minimum standard for granting of an order of temporary injunction and in basing his finding on a single ground.**
- 5. That the learned trial magistrate erred in law and fact when he allowed a potential witness for the appellant to represent and continue representing the respondent.**
- 6. That the learned trial magistrate erred in law and fact in attacking and discrediting the appellant's statement of defence at the interlocutory stage without reminding himself that in any event, the said statement of defence is curable through an amendment under Order 8 of the Civil Procedure Rules 2010.**
- 7. That the learned trial magistrate erred in law and fact in imputing extraneous consideration into this ruling in lieu of relying on the affidavit evidence put before him.**
- 8. The learned trial magistrate erred in law and fact in purporting to determine the suit at an interlocutory stage by making orders that are final in nature and import.**

When this appeal came up for directions on 30th May 2018, the parties agreed to canvass the same by way of written submissions. However, the parties failed to comply with the timelines given for the filing of the submissions.

EVALUATION AND DECISION

I have looked at the Notice of Motion dated 7th May 2014 which gave rise to the ruling delivered on 15th July 2014. I have also perused the affidavit evidence both in support and in opposition thereto including the supporting documents. It is important to note that the subject of this appeal is the grant of an injunction order at an interlocutory stage restraining the defendant/Appellant by himself or anybody else acting at his behest from barring and/or denying the plaintiff/Respondent, his family members and/or works access to land parcel No. 4058 Akanga Adjudication Section. The plaintiff/Respondent had attached numerous supporting documents including a copy of Notice of completion of Adjudication Register indicating that parcel No. 4058 are recorded in the name of Pimas Mugambi Maingi who is the plaintiff/Respondent pursuant to **Section 25 of the Land Consolidation Act** as read with **Section 25 of the Land Adjudication Act Cap 283 and 284** Laws of Kenya respectively. The said Notice of completion of Adjudication record is a provisional transiting and not a final record of ownership of an interest in land. The record is transitory in the sense that any person affected by the adjudication register who considers it to be incorrect or incomplete may object to such record within sixty days as provided for under **Section 27 of the Land Consolidation Act Cap 283** and **Section 29 of the Land Adjudication Act Cap 284** respectively.

Section 27 of the Land Consolidation Act reads as follows:

“27 After the expiry of sixty days from the date of the certificate mentioned in Section 25 or on the determination of all objections in accordance with Section 26 of this Act, whichever shall be the later, the Adjudication Register shall be final”

Again, **Section 29 of the Land Adjudication Act** reads as follows:

“29(1) Any person who is aggrieved by the determination of an objection under Section 26 of this Act may within sixty days after the date of the determination appeal against the determination to the Minister by:

- a. Delivering to the minutes on appeal in writing specifying the grounds of appeal; and**
- b. Sending a copy of the appeal to the Director of Land Adjudication and the Minister shall determine the appeal and make such orders thereon as he thinks just and the order shall be final”.**

The Notice which was issued by the Land Demarcation official attached to the supporting affidavit of the plaintiff/Respondent dated 30th October 2012 confirming that land parcel No. 4058 measuring approximately 1.20 acres is recorded in the name of the plaintiff/Respondent were only transitory provisional records

that could not be taken as prima facie evidence of ownership of land. **Section 26(1) of the Land Registration Act Cap 300** Laws of Kenya provides as follows:

“26(1) The certificate of title issued by the Registrar upon Registration or to a purchaser of land upon transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or evidenced in the certificate and the title of that proprietor shall not be subject to challenge, except”

The learned trial magistrate in his ruling held as follows:

“From the evidence on record, I am satisfied that the plaintiff has established a prima facie case with a high probability of success. The plaintiff has fulfilled the conditions for grant of injunction”

The principles for the grant of injunction orders has been laid down in the celebrated case of **GIELLA VS CASSMAN BROWN CO. LTD (1973) E.A 358** as follows:

- 1. An applicant must demonstrate a prima facie case with high chances of success**
- 2. An applicant must show that he will suffer irreparable loss for which damages will not be an adequate remedy and**
- 3. Where the Court is in doubt, it may decide the case on a balance of convenience.**

From my evaluation and analysis of the ruling of the Court, I find that the trial magistrate did not direct his mind on which of the three principles the plaintiff/Respondent satisfied the Court to warrant the granting of the injunction orders. I find and hold that the trial magistrate misdirected himself in law and fact in finding that the plaintiff had established a prima facie case when the demarcation register was only a transitory record of ownership subject to objection or appeal by an aggrieved party. Such record in my respective view could not by any stretch of imagination be taken as prima facie evidence of ownership of an interest in land in an adjudication section.

I therefore find and hold this appeal has merit and the same be allowed. In the upshot, I make the following orders:

- 1. The order issued by the learned Principal Magistrate on 15th July 2014 in Tigania P.M.C.C No. 77 of 2013 be and is hereby vacated and the same is replaced with an order dismissing the application dated 7th May 2014 with costs in the cause.**

2. The costs of this appeal shall be borne by the Respondent.

DATED AND SIGNED THIS 18TH DAY OF OCTOBER, 2018.

E. C. CHERONO

ELC JUDGE - KERUGOYA

DELIVERED IN OPEN COURT AT MERU THIS 31ST DAY OF OCTOBER, 2018

LUCY N. MBUGUA

ELC JUDGE - MERU

In the presence of:

C/A: Janet/Galgalo

Igweta H/B for Ndubi for appellant

C.P Mbaabu for respondent

Appellant

Respondent