



REPUBLIC OF KENYA

IN THE ENVIROMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 108 OF 2018

SIMON KIPKEMOI SERONEY.....1ST PLAINTIFF

PAUL KUGO TESOT.....2ND PLAINTIFF

VERSUS

JOSEPH MARITIM.....1ST DEFENDANT

JOHANA MARITIM.....2ND DEFENDANT

SAMWEL MARITIM.....3RD DEFENDANT

COUNTY LAND REGISTRAR NAKURU.....4TH DEFENDANT

RULING

(Application for injunction; application not opposed, application allowed).

1. This suit was commenced through a plaint which was filed on 8 March 2018. In the suit, the plaintiffs have pleaded that they are the owners of the land parcel Shawa/Gicheha Block 2/74. It is averred that sometimes in the year 2016, the 1st, 2nd and 3rd defendants, who are the plaintiffs' neighbours laid claim to the land. It is pleaded that in the year 2018, the plaintiffs received a letter from the 4th defendant, the Land Registrar, asking them to surrender their title for cancellation. In this suit, they wish to have orders permanently restraining the defendants from any interference with their quiet use and possession of the suit land.

2. Alongside the plaint, the plaintiff filed an application for injunction, seeking to restrain the defendants from the suit property, pending hearing and determination of the case. It is that application which is the subject of this ruling.

3. Despite being served, none of the defendants has filed any response to the application. Indeed, it is only the 4th defendant who has entered appearance in this matter.

4. The supporting affidavit is sworn by the 1st plaintiff. He has annexed a copy of the title deed to the suit land to prove ownership of it. He had deposed that they bought this property for value from the previous owner, one Kiprotich Keino. He has also annexed a copy of the letter dated 26 February 2018, from the Land Registrar, asking them to present their title for cancellation. It is his view that this action by the 4th defendant is illegal and contrary to the rules of natural justice and they have never been informed of any complaint presented to the 4th defendant.

5. I have considered the application. The principles upon which such an application is assessed were laid down in the case of ***Giella vs Cassman Brown (1974) EA 358***. An applicant needs to demonstrate a prima facie case with a probability of success, and also show that he stands to suffer irreparable loss unless the injunction is granted. Where the court is in doubt, it will consider the balance of convenience.

6. The only material that I have in this case is that presented by the applicants. I have seen that they do have a title deed in their name. I have not been given any material from the defendants which entitles the 1st, 2nd and 3rd defendants to lay claim to the suit property. The 4th defendant has also not given any explanation as to why it would demand the plaintiffs to present their title for cancellation. I am therefore persuaded that the plaintiff has displayed a prima facie case with a probability of success. If I do not issue an injunction, there may be interference with the suit land which may occasion the plaintiffs irreparable loss.

7. I have every reason to allow this application for injunction and I allow it. I do order that pending the hearing and determination of this suit, the defendants not to interfere in any way with the possession by the plaintiffs of the suit property and also not to interfere in any way with the title held by the plaintiffs.

8. The plaintiffs will also have the costs of this application.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 11th day of October 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Kanyi Ngure holding brief for Mr. Ombati for the plaintiffs/applicants.

Mr. Weche for the 4th defendant/respondent.

No appearance on the part of the 1st - 3rd defendants/respondents.

Court Assistants: Nelima/Carlton.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU