



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 750 OF 2017

(Formerly Nairobi ELC 112 of 2016)

SAMUEL SOPON PARASHURU.....PLAINTIFF

VERSUS

TAPORU MASENE.....1ST DEFENDANT

JOSHUA NKOIRISHISHE.....2ND DEFENDANT

SALAASH NKOIRISHISHE.....3RD DEFENDANT

KOIS OLE TEENU.....4TH DEFENDANT

SETEI OLE SHOMPA.....5TH DEFENDANT

NOAH R. NKUNKAT.....6TH DEFENDANT

KAJIADO DISTRICT LAND REGISTRAR.....7TH DEFENDANT

REGISTRAR OF TITLES.....8TH DEFENDANT

NATIONAL LAND COMMISSION.....9TH DEFENDANT

COUNTY GOVERNMENT OF KAJIADO.....10TH DEFENDANT

RULING

What is before Court for determination is the Plaintiff's Notice of Motion dated the 9th March, 2018 brought pursuant to sections 3A and 63 (e) of the Civil Procedure Act, Order 51 (1) of the Civil Procedure Rules and all the other enabling provisions of the law. The applicant seeks temporary mandatory injunction against the Respondents in respect of land parcel number KAJIADO/ LORNGUSUA/ 2119.

The application is based on the grounds that the Plaintiff was the registered proprietor of land parcel number KAJIADO/ LORNGUSUA/ 1173 which was subdivided into LR. No. KAJIADO/ LORNGUSUA/ 2118 and KAJIADO/ LORNGUSUA/ 2119 respectively. The Plaintiff has discovered that the Defendants have trespassed on his land parcel number KAJIADO/ LORNGUSUA/ 2119, hereinafter referred to as the 'suit land'. The 9th Defendant has placed a caveat on the suit land. On the 8th December, 2015, the 2nd, 3rd, 4th, 5th and 6th Defendants demolished the Plaintiff's perimeter fence on the suit land without any reasonable cause or colour of right. The 9th Defendant has purported to deal or interfere with the suit land by creating a situation that looked like there was a land dispute.

The application is supported by the affidavit of the Plaintiff SAMUEL SOPON PARASHURU where he reiterated his claim as stated above.

The 1st, 2nd, 3rd, 4th, 5th and 6th Defendants have opposed the application and filed a replying affidavit sworn by the 6th Defendant NOAH R. NKUNKAT where he deposes that the application herein is an abuse of the process of the court as the Plaintiff had filed a similar application dated the 8th February, 2016 but withdrew it. He contends that although the Plaintiff is the registered proprietor of land parcel number KAJIADO/ LORNGUSUA/ 1173, the said parcel of land was part of KAJIADO/ LORNGUSUA/ 63, which was registered in the name of ILPARTIMARU GROUP RANCH. He refers to a General Meeting held in 1989 where members of the said Group Ranch resolved to resurvey and subdivide land parcel number KAJIADO/ LORNGUSUA/63 amongst members to facilitate registration as well as issuance of

title deeds unto them. He contends that subdivision of the group ranch was carried out arbitrarily contrary to the Provisions of the Act culminating in the filing of the Nairobi HCCC No. 561 of 2000 where the Court ordered for repeat subdivision to enable members get equal shares in the group land. He explains that the High Court declared null and void, the title deeds issued in contravention of the Decree issued in HCCC No. 561 of 2000, with the Plaintiff's title number being one of them. He reiterates that the site on the ground being claimed by the Plaintiff as title number KAJIADO/ LORNGUSUA/ 1173 was earmarked and set aside as a public utility for Ilmarba Trading Centre. He states that KAJIADO/ LORNGUSUA/ 1173 and the resultant subdivisions namely KAJIADO/ LORNGUSUA/ 2118 and KAJIADO/ LORNGUSUA/ 2119 do not exist on the ground. Further, that the 1st, 2nd and 3rd Respondents have plots in Ilmarba Trading Centre where they run various businesses. He denies that together with his co – defendants, they are not trespassers as alleged by the Plaintiff. He reiterates that the Plaintiff is using the Police to harass them and has not come to court with clean hands.

The Plaintiff SAMUEL SOPON PARASHURU filed a further affidavit in rejoinder to the Respondents' response where he denies each and every content in the said replying affidavit and reiterates his claim. He insists he has title to the suit property, is in actual occupation thereon and hence entitled to its exclusive enjoyment. He explains that the application dated the 11th February, 2016 was seeking orders for temporary injunction while the application dated the 9th March, 2018 seeks orders for mandatory injunction. He avers that his title to the suit land has not been challenged or cancelled and he considers it sacrosanct. He denies obtaining title to land parcel number KAJIADO/ LORNGUSUA/ 1173 unlawfully and that he is occupying a public utility plot. He reiterates that the suit land exists on the map, his title is valid as well as indefeasible and the 1st to 6th Respondents are mere trespassers on his land. Further, that he has a right to protect his property and that the Defendants have no allotment, no sale agreement and no form of ownership to warrant protection. He reaffirms that no court of law has ordered him to surrender his title which affords him absolute ownership of the suit land.

Both the Plaintiff and the 1st to 6th Defendants filed their submissions that I have considered. However, the 7th to 10th Defendants did not file any response to oppose the instant application.

Analysis and Determination

Upon consideration of all the materials presented in respect of the Notice of Motion dated 9th March, 2018, the only issue for determination is whether the Plaintiff is entitled to orders of a interlocutory mandatory injunction pending the outcome of this suit.

The Plaintiff contends he is the registered proprietor of the suit land and has produced a Certificate of title to that effect. The 1st to 6th Defendants dispute the Plaintiff's ownership of the suit land and claims title deed was obtained illegally after the High Court Vide HCCC No. 561 of 2000 had barred the issuance of any title in respect of land parcel number KAJIADO/ LORNGUSUA/ 63 that belonged to the ILPARTIMARU Group Ranch.

The Plaintiff relied on various judicial authorities including: **Mbira V Gacuhi (2002) EA 137; Kenya Breweries Ltd Vs Washington Okeyo (2002) IEA 109; Jaj Super Cash and Carry Ltd Vs Nairobi City Council & 20 Others (Civil Appeal No. 111 of 2002); Locabaill International Finance Ltd V. Agroexport (1986) 1 All ER; and Chalicha FCS Ltd V Odhiambo & 9 others 1987 KLR** to support his arguments for an interlocutory mandatory injunction.

The 1st to 6th Defendants opposed the application and relied on various judicial decisions including **Uhuru Highway Development Limited Vs Central Bank of Kenya Ltd and 2 others (1996) eKLR; Panari Enterprises Limited Vs MS LIJOODI & Anor ELC No. 779 of 2013; and Christopher Kitur Kipwambok Vs Vipul Ratilal Dodhia & Anor ELC Case No. 65 of 2013** to buttress their arguments.

In the case of **Kenya Breweries Limited vs. Washington Okeyo (2002) EA 109** the Court of Appeal stated that, '**a mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally, be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff, a mandatory injunction will be granted on an interlocutory application.**'

The mandatory injunction sought by the Plaintiff seeking to bar the Defendants from interfering with the suit land can only be granted in special circumstances where the Court thinks it ought to be decided at once, and after full trial, it will be evident that the injunction was properly granted. Even though the Plaintiff is the registered proprietor of the suit land, I note the 1st, 2nd, 3rd and 4th Defendants have raised issues that the suit land emanated from the IL PARTIMARU GROUP RANCH. I further note the Plaintiff was issued with his title after the issuance of the decree in HCCC 561 of 2000 dated 19th July, 2000 where the Court directed that the process of subdivision of the KAJIADO/ LORNGUSUA/ 63 was to be repeated and or rectified. The Plaintiff has not indicated to court whether this was the case and at this juncture I am unable to make a proper determination on whether there was obedience or disobedience of the court decree, at the time the Plaintiff got registered as proprietor of the suit land. It is in these circumstances and in relying on the above cited judicial authority that I decline to grant the mandatory injunction sought pending the outcome of the suit.

Since the Plaintiff already holds a title to the suit land and is in occupation thereon, I will proceed to grant the following orders:

1. Prevailing Status Quo be maintained and the Plaintiff to remain in possession as well as occupation of the suit land pending the outcome of the Suit.
2. The costs of this application to be in the cause.

The parties are urged to comply with Order 11 and set the suit down for hearing as soon as possible.

Dated signed and delivered in open court at Ngong this 12th day of November, 2018.

CHRISTINE OCHIENG

JUDGE