



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC SUIT NO. 234 OF 2016

DAVID KAMWIKO LIMBERE.....PLAINTIFF

VERSUS

THE LAND ADJUDICATION AND SETTLEMENT

OFFICER MURIRI.....1ST DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....2ND DEFENDANT

R U L I N G

1. The Notice of Motion dated 28th, November, 2016 seeks the following orders:-

1. spent.

2. That the Defendant /respondent, their agents, servants or anybody else acting on their behalf or at their behest be ordered to rectify their register and insert OB. NO. 1135 and not 2016 and parcel No to read 6557 Ankamia Adjudication Section in lieu of 6657 pending interparties hearing of this application.

3. Pending full hearing and determination of this suit.

4. Cost of this suit be borne by the defendants.

2. The grounds in support of the application are:-

I. The applicant is facing danger of eviction from his portion of land after 30/11/2016.

II. The Land Adjudication and Settlement Officer will be closing their registered on 30/11/2016 to enable them process title deeds.

3. Applicant has also filed a Supporting Affidavit where he has deponed as follows:-

1. That applicant is the registered owner of Land Parcel No. 6557 situated within Ankamia Adjudication Section.

2. That at all material times and relevant to these issues raised in this suit applicant has in occupation of the said parcel of land No. 6557 Ankamia Adjudication Section.

3. That he filed an objection with the Land Adjudication and Settlement Officer at Muriri vide OB

1135 for P/No. 6557.(Annexed is a receipt Marked DKL 1).

4. That the said objection was heard and decided in my favour.

5. That the Land Adjudication and Settlement Officer (DLASO) fraudulently indicated applicants objection as OB 2016 and his Land Parcel as 6657 instead of 1135 and 6557 respectively.

6. That when he went to collect a letter for security from Sub- County Adjudication Settlement office Tigania East Sub- County dated 9/9/2016 he realized that the objection number and land parcel were wrongly indicated.

7. That the register for objection shall be closed by 30/11/2016 and if closed in the current position the title deed may be issued to a stranger.

8. Applicant has annexed supporting documents.

4. I find that prayer No. 2 in the Notice of Motion filed on 28: 11:16 is similar to the first prayer in the Plaintiff.

What the Applicant is asking is actually an order of specific performance where he desires that the Ankamia Adjudication Register be rectified to reflect the correct particulars in respect of the Applicant's Land.

If the orders are granted, a substantial part of the suit will be disposed off, leaving just one prayer, that of general damages.

5. Ordinarily Court are reluctant to grant affirmative orders at the interlocutory stage. It is only in special cases under special circumstances where such orders are granted. ***In the case of Maher Unissa Karim vs. Edward Oluoch Odumbe H.C.C.C No.91 of 2015 in Nairobi, Judge Aburili was dealing with a case of a mandatory injunction at the interlocutory stage. She stated thus;***

“ The test for granting a mandatory injunction is different from that enunciated in the Giella vs Casman Brown case which is the locus classicus case for prohibitory injunctions. The threshold in mandatory injunctions is higher than in the case of prohibitory injunctions and the Court of Appeal in the case of Kenya Breweries Ltd vs Washington Okeyo (2002) EA 109 had occasion to discuss and consider the principles that govern the grant of mandatory injunctions. The Court of Appeal held that the test for grant of a mandatory injunction was as correctly stated in VOL 24 of Halsbury’s Laws of England 4th Edition paragraph 948 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 a simple and summary one which can be easily remedied, or if the defendant attempts to steal a march on the plaintiff, a mandatory injunction will be granted on an interlocutory”.

6. When the matter came up for interpartes hearing on 07:12:16, the Court noted that the District Land Adjudication and Settlement Officer (D.L.A.S.O) , Mr . Keffa Ouru was present and he told the Court that:-

“We were not closing the register on 30: 11: 16 it is not known when the register will be closed. I can verify the record and see if Prayer 3 can be granted.”

7. Defence Counsel then sought for time for the D.L.A.S.O to clarify the Apposite issues. The request was granted.

8. On 14: 13:16, the D.L.A.S.O , Keffa Ouru availed to Court the report from Ministry of Lands, Housing

and urban development. The contents of that report are that:-

1. No. 6557 is recorded in the name of Kamwiko Limbiro measuring 3.35 acres.

2. Transfer 1 acre to Joseph Murungi Limbiro 0.5 acres.

3. 0.5 acres to Plot No. 13602 to Remah Munga'thia Itewa.

9. The Report is almost consistent to what Applicant told the Court on 14:12:16, that his land is No. 6557, that he sold 1 acre to Joseph Murungi Limbiro and that he had also sold 0.5 acres to Remah Munga'thia Itewa.

The only discrepancy between Applicant's averments made on 14:12:16 in Court and the D.L.A.S.O's report is with regard to what is due to Joseph Murungi. It could be an error in the report where the acreage of 0.5 is mentioned. The sentence starts with the words “ **transfer 1 acre** “. I would take it that the true position is that Applicant had sold 1 acre of land to Joseph Murungi and hence that transaction should be captured.

9. At some point, I note that a Consent was to be recorded. Applicant was to avail his identity Card whereas the state Counsel had stated that he needed to study the D.L.A.S.O's report.

10. I handled the matter for the first time on 08:02:17 when Mr. Kiety for the state indicated that parties were settling the matter. The Court gave the parties the date of 16:02:17 for settlement.

Come 16:02:17 and there was no appearances from defence. Applicant had his ID Card in Court. The same was ID NO. 9295962 in name of David Kamwiko.

11. This is a case whereby the Applicant has advanced a plausible explanation as to why the orders sought for should be granted. He is not the one in charge of the register. He has no control over the Adjudication Register. If it is closed the titles to the parcels of land would be issued with the errors, of which the defence has more or less admitted going by the D.L.A.S.O's report. (From Ankamia Adjudication Section). It is not clear as to what else the defence are looking for, or waiting for.

12. I therefore find that the circumstances of this case do qualify as special ones, to warrant the granting of the affirmative /mandatory orders sought by the applicant.

13. The application is hence allowed whereby. ***The defendants are hereby ordered to rectify their register and insert the OB as No. 1135 and not 2016 and for the parcel to read No, 6557 Ankamia Adjudication Section and not No. 6657 pending the full hearing of the suit.***

Defendants are condemned to pay the costs of this Application.

RULING READ, AND DELIVERED IN OPEN COURT AT MERU THIS 8TH DAY OF MARCH, 2017 IN THE PRESENCE OF:-

CA: Janet

Applicant present

L.N. MBUGUA

JUDGE