



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.148 OF 2015

MARGRATE NYAMBURA KING'ARA1ST PLAINTIFF

JOHN WAITHAKA KING'ARA2ND PLAINTIFF

VERSUS

FRANCIS KIMANI NJONGE1ST DEFENDANT

GATHIGIRIRI FOUNDATION COMPANY.....2ND DEFENDANT

RULING

(suit by plaintiffs contending that 1st defendant is registered as proprietor in trust for them; 1st defendant refuting the allegation; application for injunction; order that status quo be maintained pending hearing of the suit)

1. This suit was commenced by way of plaint filed on 21 May 2015. The 1st plaintiff has pleaded that she is niece to one Njonge Kingara (deceased) under whose name the land parcel Gilgil/Gathigiriri Karunga/Block 10/533 was previously registered. It is pleaded that she was born and raised in this land and that she has children and grandchildren all raised on the suit land. It is her case that the deceased held the suit land in trust for her family. The 2nd plaintiff is a brother to the said deceased and he has also contended that the deceased held the suit land in trust for them since he was the first born. It is claimed that the 2nd plaintiff and their deceased mother paid for the land in issue at the offices of the 2nd defendant. The 1st defendant is son to the deceased and it is claimed that he and his family have never resided on the suit land. It is averred that the 1st defendant transferred the land into his name without involving the other family members despite being aware that his father held the suit land in trust for them. It is claimed that this transfer was done in secret as the deceased died on 21 June 2011 and the transfer was done on 4 July 2011. It is contended that the 2nd defendant through its officials acted as accomplice to the actions of the 1st defendant. In the suit, the plaintiffs inter alia want the title of the 1st defendant cancelled and the defendants restrained permanently from the land.

2. Contemporaneously with the suit, the plaintiffs filed an application for injunction seeking to restrain the defendants from the suit land until this case is heard and determined. It is that application which is the subject of this ruling.

3. The defendants have opposed the motion by filing replying affidavits sworn by the 1st defendant and one Francis Daniel Kanyuku for the 2nd defendant. The 1st defendant has deposed that his father was never registered as proprietor of the suit land. He has averred that his father purchased shares from the

2nd defendant company and was then issued with a share certificate No. 84 in the year 1977. He has stated that the company then distributed the land to its members in the year 1997. He has deposed that it is strange for the plaintiffs to claim that they have been on the land since the year 1964 while the land only came into existence in the year 1997. He has stated that before his father died, he advised the directors of the company to transfer his shares to him and this was done on 24 May 2011. After the demise of his father, he went to the company offices and got a clearance certificate which enabled him to obtain title in his name. He has stated that he did not need to go through any succession process. He has wondered why the plaintiffs waited until his father died for them to lodge such a claim. He has disputed any alleged trust. He has further deposed that the 2nd applicant has been living in the USA since the year 1964 and did not even attend his father's funeral.

4. The gist of the reply by the 2nd defendant is that the deceased did transfer his shares to his son, the 1st defendant.

5. I have considered the matter alongside the submissions of counsel for both plaintiffs and defendants.

6. The case of the plaintiffs is that the 1st defendant holds this land in trust for them. This is of course refuted by the 1st defendant. I may not at this stage of the proceedings be able to come to a conclusive finding on whether or not the 1st defendant holds the land in trust for the plaintiffs. That will have to be determined after the case is heard on its merits.

7. In my view, the best order to make is to have the status quo maintained with regard to possession of the property and there be no dealings over the property, so that in the event that the plaintiffs succeed in their suit, the judgment will not be rendered nugatory.

8. I therefore order as follows :-

(i) With regard to possession, the current status quo maintaining in the land parcel Gilgil/Gathigiriri Karunga Block 10/533 be maintained until this suit is heard and determined.

(ii) I hereby bar both plaintiffs and 1st defendant from selling, charging, leasing or entering into any disposition over the suit land until this case is heard and determined.

(iii) I do issue an order of inhibition, inhibiting the registration of any disposition in the register of the land parcel Gilgil/Gathigiriri Karunga Block 10/533 until this suit is heard and determined.

(iv) The costs of this application shall be costs in the cause.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 1st day of March ,2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :

No appearance on the part of counsels for the applicants and respondents

Court Assistant: Nelima

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU