



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU

ELC NO.1 OF 2016

DILEEP MANIBHAI PATEL.....PLAINTIFF

VERSUS

SAMUEL MBURUGU MWANGI & OTHERS....DEFENDANTS

RULING

(Application for injunction; principles to be applied ; plaintiff having been registered as proprietor of suit properties; the same transferred to the 1st defendant; plaintiff not aware of the transaction and alleging fraud; no response filed by the defendants; prima facie case established; application for injunction is allowed and order of inhibition also issued).

1. This suit was commenced by way of plaint filed on 4 January 2016. In the plaint, it is pleaded that the plaintiff is the owner of the land parcels Miti Mingi/Mbaruk Block 1/1205 and 1206 (Kianjoya D). It is averred that the plaintiff was the registered proprietor of these two land parcels but on unknown dates, the land was fraudulently transferred to the name of the 1st defendant. In the suit, the plaintiff inter alia wants the title of the 1st defendant revoked and the land register to be rectified so as to reflect the plaintiff as the proprietor.
2. Together with the plaint, the plaintiff filed an application seeking to have orders restraining the defendants from interfering with the plaintiff's quiet possession of the suit premises. The plaintiff also wants an order of inhibition registered against the two titles in issue.
3. Despite being served, the defendants have not responded to the application. All they have done is file a memorandum of appearance. The only material that I have in respect of the application is therefore that provided by the plaintiff.
4. I have gone through the supporting affidavit filed by the plaintiff in support of the motion. I have seen copies of the title deeds that were issued to the plaintiff. They show that the plaintiff was issued with title on 8 September 1997. I have also seen the annexed copy of the Green Card which shows that the 1st defendant became registered as proprietor on 27 June 2006. It is of course this entry which the plaintiff has attacked. It does appear that the 1st defendant has made a move to sell the properties to a third party for a consideration of Kshs. 38,000,000/=.
5. The plaintiff has deposed that he lives and works in the United Kingdom. In the month of May 2015, he was informed by his brother that a person has encroached into the land. This prompted him to conduct a search and it was at this point that he discovered that a conveyance had been registered in the name of the 1st defendant. He reported the matter to the CID. He has averred that he never executed any conveyance to the 1st defendant and still has his original title deeds.

6. The defendants have not responded to the application to demonstrate that the registration of the land in the name of the 1st defendant has been above board. They have failed to rebut the allegations of the plaintiff that the registration of the 1st defendant was done by way of fraud. I am of the view that the plaintiff has established a prima facie case with a probability of success and is deserving the order of injunction. If the order is not issued, the 1st defendant or other third parties claiming through him, may interfere with the land to the detriment of the plaintiff.

7. I therefore issue an order restraining the 1st defendant and or his servants/agents/assigns or any person claiming under him, from entering, being upon, utilizing, developing, disposing off, or in any other way interfering with the plaintiff's occupation and possession of the land parcels Miti Mingi/Mbaruk Block 1/1205 and 1206. I also issue an order of inhibition, inhibiting the registration of any disposition in the register of these two land parcels until this case is heard and determined.

8. The plaintiff shall also have costs of the application.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 2nd day of March 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of : -

Mrs. Murande holding brief for Mr.Githui for the plaintiff/applicant

No appearance for the defendants/respondents

Court Assistant : Nelima

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU