



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 1213 OF 2016

FRANCIS KURIA KARIUKI..... 1ST PLAINTIFF

JOHN KURIA KARIUKI.....2ND PLAINTIFF

JAMES MAINA KARIUKI.....3RD PLAINTIFF

SAMUEL MWANGI KARIUKI.....4TH PLAINTIFF

VERSUS

DAVID NGANGA KARIUKI.....1ST DEFENDANT

JAMES NGARI KARIUKI.....2ND DEFENDANT

RULING

The Plaintiff and the Defendants are the children of Simon Kariuki Kuria, deceased (hereinafter referred to as “the deceased”). Following the death of the deceased, the Plaintiffs were appointed as the administrators of his estate in Nairobi High Court Succession Cause No. 1380 of 2011 (“the Succession Cause”) on 2nd December 2011. The Grant of Letters of Administration issued to the Plaintiffs was confirmed on 3rd July, 2012. The deceased had a total of ten (10) parcels of land. During the hearing of the application for confirmation of the said Grant which was issued to the Plaintiffs, the beneficiaries of the estate of the deceased who included the Plaintiffs, the Defendants and others who are not parties to this suit agreed on the mode of distribution of the said parcels of land which formed part of the deceased estate. The parcel of land known as L.R No. Ongata Rongai Township/59 (“the suit property”) was among the parcels of land which formed part of estate of the deceased. According to the Certificate of Confirmation of Grant dated 3rd July, 2012, the suit property was supposed to be shared equally between the Plaintiffs. The Defendants were allocated other parcels of land forming part of the estate. Following the confirmation of Grant as aforesaid and distribution of the estate, the Plaintiffs were registered as the proprietors of the suit property on 27th March 2013 and a certificate of lease issued to them on the same date.

On 1st July, 2015 some of the beneficiaries of the estate of the deceased challenged the registration of the suit property in the names of the Plaintiffs contending that the beneficiaries of the estate of the deceased had agreed that the Plaintiffs were to hold the said property in trust for all the beneficiaries. The application which was filed in the Succession Cause was dismissed on 29th January, 2016 by Muchelule J. The judge held that all the beneficiaries of the estate of the deceased had agreed on the mode of distribution of the estate of the deceased pursuant to which agreement, the suit property was allocated to the Plaintiffs. The court held that the beneficiaries of the estate of the deceased could not be allowed to

go back on the agreement on the basis of which the estate of the deceased had been distributed.

The Plaintiffs who are the registered owners of the suit property brought this suit on 5th October, 2016 seeking a declaration that they are the rightful owners of the suit property, vacant possession of the property and a permanent injunction to restrain the Defendants from trespassing on, collecting rent, managing, damaging and/or interfering with the suit property and the developments thereon.

Together with the plaint, the Plaintiffs filed an application by way of Notice of Motion dated 28th September 2016 seeking a temporary injunction to restrain the Defendants from renting out, collecting rent, from any tenant, managing, damaging, wasting and/or interfering with the suit property and the buildings thereon pending the hearing and determination of the suit. The application was brought on the grounds that, the Defendants had invaded the suit property and forcefully evicted the Plaintiffs' tenants therefrom and rented out some housing units to their own tenants and from whom they were collecting rent. The Plaintiffs contended further that the Defendants had taken over the management of the building standing on the suit property and had hired goons to keep off the Plaintiffs from the premises. The Plaintiffs contended that as the proprietors of the suit property, they were entitled to protection from the court so that they may enjoy their proprietary rights.

The application was opposed by the Defendants through an affidavit sworn by the 2nd Defendant on 19th October, 2016. The Defendants contended that the suit property was transferred to the Plaintiffs fraudulently. The Defendants contended that the beneficiaries of the estate of the deceased did not consent to the Plaintiffs being allocated the suit property. The Defendants contended that the Plaintiffs forged the signatures of some of the beneficiaries of the estate of the deceased in the documents which were filed in the Succession Cause so as to obtain the suit property.

The application came up for hearing on 1st November, 2016 when Ms. Ougo appeared for the Plaintiffs while the Defendants appeared in person. In her submission, Ms. Ougo relied entirely on the affidavit in support of the application. She submitted that the Plaintiffs are the registered owners of the suit property and that the Defendants had no interest in the same. She submitted further that the Defendants did not appeal against the decision which was made in the Succession Cause in which the court had confirmed the Plaintiffs' rights over the suit property. Counsel submitted that the Defendants were bound by the said decision.

In his submission in reply, the 1st Defendant argued that the Plaintiffs held the suit property in trust for the beneficiaries of the estate of the deceased. He submitted that the Defendants did not consent to the suit property being registered in the names of the Plaintiffs. On his part, the 2nd Defendant denied that he was a trespasser on the suit property. He argued that the rooms which he was occupying on the suit property were the same ones he occupied during the lifetime of the deceased.

I have considered the Plaintiffs application together with the affidavit filed in support thereof. I have also considered the replying affidavit by the Defendants together with the submissions by the Plaintiffs advocate and the Defendants in person. I am satisfied from the material on record that the Plaintiffs have established a prima facie case with a probability of success against the Defendants. The Plaintiffs have demonstrated that they are the registered owners of the suit property and as such are entitled to immediate possession thereof. The Defendants who have claimed that the Plaintiffs had acquired the suit property fraudulently placed no evidence before the court in proof of this allegation. I must add that this allegation falls flat on the face of the ruling by Muchelule J. made on 29th January, 2016 in the Succession Cause. The issues raised in the Defendants' replying affidavit were raised before Muchelule J. who considered the same and found no merit in respect thereof. The Defendants have not denied the allegations made against them in the Plaintiff's affidavit in support of the application. Since the Defendants are not the owners of the suit property and their entry onto the said property was not authorized by the Plaintiffs, they are trespassers on the property. I am also satisfied that the Plaintiffs would suffer irreparable injury which cannot be compensated in damages. If the orders sought are not granted the Plaintiffs would continue to be kept away from the suit property and would no doubt suffer unquantifiable loss for being denied access to their property.

For the foregoing reasons, I am satisfied that the Plaintiffs have met the conditions for grant of the orders sought. I will therefore allow the Notice of Motion dated 28th September 2016 in terms of prayer 3 thereof. The Plaintiffs shall have the costs of the application.

Delivered, Dated and Signed at Nairobi this 28th day of April, 2017

S. OKONG'O

JUDGE

In the presence of

Mr. Baragu h/b for Ms. Thung for the Plaintiffs

N/A for the Defendants

Kajuju Court Assistant