



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT EMBU

ELC CASE NO. 335 OF 2015

SILAS MUGO NJOKA.....1ST PLAINTIFF/APPLICANT

STANLEY NYONI NJOKA.....2ND PLAINTIFF/APPLICANT

ALBERT IRERI.....3RD PLAINTIFF/APPLICANT

NJUKI NJOKA.....4TH PLAINTIFF/APPLICANT

MUGO JAVAN.....5TH PLAINTIFF/APPLICANT

NJERU NJOKA.....6TH PLAINTIFF/APPLICANT

NJOKA KINYAMARIO.....7TH PLAINTIFF/APPLICANT

NJUE MUBORO.....8TH PLAINTIFF/APPLICANT

GATHAKA JAVAN Alias

WILSON NJUE JAVAN.....9TH PLAINTIFF/APPLICANT

VERSUS

CHARLES NYAGA NTHIA.....1ST DEFENDANT/RESPONDENT

NICHOLUS NDARU NTHIA.....2ND DEFENDANT/RESPONDENT

JONATHAN IRERI NJUE.....3RD DEFENDANT/RESPONDENT

EUNICE ITA ALBERT.....4TH DEFENDANT/RESPONDENT

JOHN MUGO NJOKA.....5TH DEFENDANT/RESPONDENT

BENJAMIN NJERU NJOKA.....6TH DEFENDANT/RESPONDENT

NJERU NJUE.....7TH DEFENDANT/RESPONDENT

PETERSON NYAGA NJUE.....8TH DEFENDANT/RESPONDENT

AMOS NJOKA KIRIRU.....9TH DEFENDANT/RESPONDENT

ANTONY NJERU NJUE.....10TH DEFENDANT/RESPONDENT

JAMLECK NJOKA MBOCO.....11TH DEFENDANT/RESPONDENT

DUNCAN NJERU NTHIA.....12TH DEFENDANT/RESPONDENT

RULING

This is in respect to the plaintiffs' Notice of Motion dated 30th October 2015 and filed herein on 2nd November 2015 seeking the following orders:

1. Spent.

2. Spent.

3. That the Honourable Court be pleased to issue a temporary injunction barring the 1st to 12th defendants by themselves, their agents, servants or anyone claiming through them from evicting the 1st to 9th plaintiffs, transferring or interfering in anyway whatsoever with L.R MBEERE/MBITA/1006, 1104, 1105, 1106, 1107, 1109, 1100 and 1110 pending the hearing and determination of this suit.

4. That costs of this application be borne by the 1st to 12th defendants.

The application is grounded on the reasons set out therein and supported by the affidavit of **STANLEY NYONI NJOKA** the 2nd defendant also sworn on behalf of the 1st, 3rd, 4th, 5th 6th, 7th, 8th and 9th defendants.

The gist of the plaintiffs' application is that although the land parcels No. MBEERE/MBITA/1006, 1104, 1105, 1106, 1107, 1109, 1100 and 1110 (the suit land herein) are registered in the names of the 1st to 9th defendants, the plaintiffs have lived thereon for over fifty (50) years and have extensively developed the same and have no other land. That the suit land was originally registered in their names before being awarded to the defendants following the Minister's Appeal Case No. 203 of 1999 whose decision they only came to learn about on 30th September 2015. They are therefore apprehensive that the defendants will evict them from the suit land and that is why they have moved to this Court to seek a declaration that the award in the Minister's Appeal Case No. 203 of 1999 cancelling their titles to the suit land is null and void and should be set aside and also a permanent injunction restraining the defendants, their servants, agents and anyone claiming through them from interfering with their occupation of the suit land. Among the documents annexed to their application are the Green Card to the suit land showing that they were the original proprietors thereof.

In resisting the application, the 3rd defendant **JONATHAN IRERI NJUE** filed a replying affidavit on behalf of his co-defendants in which he deponed that the plaintiffs were only allocated the suit land on 14th January 2000 under the Land Adjudication Act and therefore they have not been in occupation for more than fifty (50) years. That the plaintiffs' allegations that they were not informed of the Minister's decision are false as they were fully aware having received a letter dated 20th December 2011.

In a further supporting affidavit, the 2nd plaintiff reiterated the contents of his previous affidavit adding that if they had known about the Minister's decision, they would have challenged it immediately. That they have been in occupation of the suit land for over fifty (50) years and have even buried their relatives on the land.

The application was canvassed by way of written submissions filed both by **MUGAMBI NJERU** advocate for the plaintiffs and **SANE** advocate for the defendants.

I have considered the application, the rival affidavits and submissions by counsel.

An application for temporary injunction pending trial is to be determined following the principles laid down in **GIELLA VS CASSMAN BROWN & CO. LTD 1973 E.A 358** which are:

- 1. The applicant must show a prima facie case with a probability of success.***
- 2. An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which cannot adequately be compensated by an award of damages and;***
- 3. If in doubt, the Court will determine the application on the balance of convenience.***

A prima facie case on the other hand was defined in the case of **MRAO VS FIRST AMERICAN BANK OF KENYA LTD & TWO OTHERS C.A CIVIL APPEAL No. 39 of 2002** as:

“..... a case which, on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation from the latter”

Further, in **NGURUMAN LTD VS JAN BONDE NIELSEN & OTHERS C.A CIVIL APPEAL No. 77 of 2012**, the Court of Appeal stated thus in describing a prima facie case:

“The applicant need not establish title. It is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance of or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it, the applicant’s case is more likely than not to ultimately succeed”.

In the same case, the Court of Appeal stated that:

“We reiterate that in considering whether or not a prima facie has been established, the Court does not hold a mini trial and must not examine the merits of the case closely. All that the Court is to see is that on the face of it, the person applying for an injunction has a right which has been or is threatened with violation”

Finally, as was held in the case of **FILMS ROVER INTERNATIONAL VS CANNON FILM SALE LTD 1986 3 ALL E.R.**, the Court considering such an application should take the route or course that appears to carry the lower risk of injustice should it turn out to have been ***“wrong”***.

I shall be guided by the above precedents.

The plaintiffs’ claim that they have been on the suit land for over fifty (50) years and have fully developed it has been rebutted by the defendants who claim that infact the plaintiffs have only been on the suit land since 2000. Either way, the plaintiffs remain in possession of the suit land and have indeed obtained orders restraining the defendants from evicting them. The plaintiffs have also exhibited Green Cards to the suit land in their names and no doubt one of the issues for determination by the trial Court is how those titles were cancelled and issued in the names of the defendants. I think there is sufficient evidence of a right which is threatened with violation to entitle the plaintiffs to an order of injunction.

Secondly, being in possession of the suit land, a denial of a temporary injunction coupled with the imminent threat of eviction would mean that the plaintiffs may be dispossessed of the same and in my view, such loss would be disproportionate to any amount of damages. Besides, no prejudice will be occasioned to the defendants who, in any case, are not in occupation of the suit land. In the circumstances, the greater cause of justice will be served by granting, rather than denying, the plaintiffs the orders of temporary injunction pending trial. I am persuaded therefore that the plaintiffs have met the threshold set out in the **GIELLA** case (supra) for the grant of a temporary injunction.

The up-shot of the above is that the plaintiffs' application dated 30th October 2015 and filed herein on 2nd November 2015 is allowed in the following terms:

1. A temporary injunction is issued restraining the 1st – 12th defendants by themselves, their agents, servants or any one claiming through them from evicting the plaintiffs, transferring or interfering in any way with land parcels No. MBEERE/MBITA/1006, 1104, 1105, 1106, 1107, 1109, 1100 and 1110 pending the hearing and determination of this suit.

2. The parties to comply with the pre-trial directions so that this suit is heard and determined in the next 12 months.

3. Costs in the cause.

B. N. OLAO

JUDGE

31ST MAY, 2017

Ruling delivered, dated and signed in open Court this 31st day of May, 2017

Ms Wambugu for Mr. Mugambi for Plaintiffs/Applicants present

No appearance by Sare Advocate for the Defendants/Respondents

Matter be mentioned before Hon. Justice Angima at Environment and Land Court Embu on 15th June 2017 for further orders

Mention notice to issue.

B. N. OLAO

JUDGE

31ST MAY, 2017