



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 489 OF 2016**

**JOSEPH KIMANI GITAU .....PLAINTIFF**

**VERSUS**

**LAND REGISTRAR NAIVASHA.....1<sup>ST</sup> DEFENDANT**

**CHRISTOPHER NGUGI CHIURI .....2<sup>ND</sup> DEFENDANT**

**PAUL GITAHU MWAURA.....3<sup>RD</sup> DEFENDANT**

**RULING**

***(Application for injunction; principles to be applied; plaintiff having been registered as proprietor of the suit land; his house broken into and documents lost; plaintiff reporting loss of his title deed and placing a restriction on the property; lost title deed advertised for replacement; in the interim, restriction mysteriously removed and property transferred to the 2nd and later 3rd defendant; prima facie case established; application for injunction allowed)***

1. This suit was commenced by way of a plaint that was filed on 10 November 2016. The plaintiff has pleaded that he has all along been the owner of the land parcel Gilgil/ Gilgil Block 1/3814 (Kekopey) and that he held the original title deed to the said land. He has pleaded that on 24 September 2015, thieves broke into his residence and stole the said title deed among other properties. Owing to this, he moved to place a restriction on his property. He has pleaded that the 2nd defendant, in cohorts with the 1st defendant, the Land Registrar, Naivasha, had this restriction removed and the suit land transferred to the 2nd defendant who later transferred it to the 3rd defendant. The plaintiff has averred that this is a well calculated scheme to deprive him of his property. He has pleaded that he reported the matter to the police and investigations were done leading to the arrest of the 2nd defendant who is currently facing criminal charges. In his suit, the plaintiff has asked for orders inter alia for the cancellation of the title deed irregularly obtained by the 2nd and 3rd defendants and for a declaration that he is the rightful proprietor of the suit land.

2. Together with the plaint, the plaintiff filed an application for injunction inter alia seeking to restrain the defendants from entering into any further dispositions over the suit land. In the same application, he has asked for orders of cancellation of the title deeds of the 2nd and 3rd defendants, a declaration that he is the owner of the suit land, and a permanent injunction against the defendants. In his supporting affidavit, he has deposed that he reported the loss of his title deed to the Naivasha Land Registry and vide a notice published in the Kenya Gazette of 11 December 2015, the public was notified of the loss of the said title deed and it was further notified that a new title deed would be issued on expiry of 60 days. On expiry of

the 60 days, the plaintiff went to collect a new title deed only to find that the restriction that he had placed had been removed and the land transferred to the 2nd and then the 3rd defendant. He perused the records and discovered that a person had impersonated him and fraudulently transferred the land to the 2nd defendant.

3. Despite being served, the defendants have not entered appearance nor replied to the subject application.

It will be discerned that the plaintiff has sought more than just orders of injunction. He also seeks final orders. I think the final orders will have to await a full hearing on merits. I am however prepared to issue an order of injunction for I am of the view that from the material tendered, the plaintiff has demonstrated a prima facie case with a probability of success.

4. I have seen that on 30 September 2015, he did report to the police the loss of his title documents. I have also seen that on 2 October 2015, he did write to the Land Registrar, Naivasha, informing him that his title documents were stolen and that a restriction should be entered in the register of his title. A restriction was indeed registered on the same day. I have also perused the Gazette Notice No. 9150 dated 11 December 2015, which was a public notice stating that the plaintiff's title deed is lost and a new one would be issued on expiry of 60 days. Given the above, it is suspicious that the restriction was removed on 25 November 2016 and a transfer registered in favour of the 2nd defendant on 1 December 2015. The transfer to the 3rd defendant which was registered on 10 February 2016 is also suspicious.

5. I have no doubt that if I do not issue orders of injunction, the plaintiff stands the risk of suffering further loss. Unless restrained, the 3rd defendant, who is the current registered owner of the property, may move to dispose of it or take possession of the suit land which will prejudice the plaintiff.

6. I therefore make the following orders :-

*(i) That pending the hearing and determination of this suit, an order of inhibition is hereby issued, inhibiting the registration of any disposition in the register of the land parcel Gilgil/Gilgil Block 1/3814 (Kekopey).*

*(ii) That the 2nd and 3rd defendant are hereby barred from selling, leasing, charging or entering into any disposition over the land parcel Gilgil/Gilgil Block 1/3814 (Kekopey).*

*(iii) That pending the hearing and determination of this suit, the 2nd and 3rd defendants and/or their agents/assigns, are hereby barred from entering, taking possession of, or in any other way interfering with the quiet possession of the plaintiff of the land parcel Gilgil/Gilgil Block 1/3814 (Kekopey).*

*(iv) The plaintiff shall have the costs of this application as against the defendants jointly and/or severally.*

7. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 17<sup>th</sup> day of May 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of :**

Mr Okwengu holding brief for Mr. Achieng Owuor for the plaintiff.

Defendants: absent

Court Assistant : Nelima

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**