



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 50 OF 2014

TERESIA MUTHONI KUYA1ST PLAINTIFF

AGNES WAMBUI KUYA2ND PLAINTIFF

VERSUS

JOHN NDUNG’U KAMAUDEFENDANT

RULING

1. In the Application dated 20th May, 2014, the Plaintiff is seeking for the following orders:

a. That the Honourable Court be pleased to issue a temporary injunction restraining the Defendant/Respondent, his servants, agents, employees, relatives or any other person acting through or under his instructions from being on, entering upon, remaining on, erecting any structure, carrying out any development, construction or any activity in and on the suit property and alienating, wasting, damaging, transferring, disposing, charging, dealing with and/or interfering with the Plaintiff’s interests in the suit property pending the hearing and determination of this suit.

b. That pending the hearing and determination of this suit, a temporary injunction do issue to Defendant/Respondent, his servants, agents, employees, relatives or any other person acting through or under his instructions or otherwise howsoever restraining them from interfering howsoever with the Plaintiff/Applicant’s quiet enjoyment, possession and occupation of the suit property.

c. That a mandatory injunction do issue compelling the Defendant to demolish and/or remove the structures and fence erected around the suit property at the Defendant’s expense.

d. That a mandatory injunction do issue for the eviction of the Defendant, his agents servants, employees, relatives and/or any person acting through or under his instructions from the suit property.

e. That a date for hearing inter-partes be given.

f. That the costs of this Application be awarded to the Plaintiffs/Applicants.

2. The Application is premised on the grounds that the Plaintiffs are the administrators of the Estate of the late Lekina Ole Kuyo, who is the legal owner of the suit property; that the late Ole Kuyo entered into an agreement of sale of a portion of his land and that it later transpired that the Defendant had transferred a

larger portion of land to himself.

3. The Plaintiffs deponed that other than transferring to himself a larger parcel of land than what was agreed in the agreement, the Defendant has also failed to pay the balance of the agreed purchase price.

4. In his Replying affidavit, the Defendant deponed that the suit property was transferred to him upon a Transfer that was duly signed by Moses Kuya Ole Lekina, the duly authorized Attorney of the registered proprietor, Lekina Ole Kuyo; that the registered proprietor had consented to the sale of land measuring 10.00Ha out of his land measuring 26.86Ha and that all the necessary consents were obtained including the consent of the Board.

5. According to the Defendant, after the transfer of 10.4Ha, the Plaintiffs were left with 6Ha; that the transfer could not have been transferred without the full purchase price being paid and that the title to the suit property has since been cancelled after the sub-division of the land into 54 sub-divisions.

6. The Plaintiffs' and the Defendant's Advocates filed submissions and authorities which I have considered.

7. It is not in dispute that the late Lekina Ole Kuyo Noonkileti was the proprietor of L.R. No 14812/5 measuring 10.14Ha.

8. According to a copy of the Transfer document annexed on the Applicant's Affidavit, the late Ole Kuyo initially owned land known as 14812 measuring 50.79Ha before the same was sub-divided to form the suit property.

9. The annexed Transfer shows that the Defendant acquired 10.14Ha from the late Ole Kuyo for a consideration of Kshs. 250,000. The said Transfer document is dated 9th April, 1997 and was registered on 10th May, 1999.

10. According to the Plaintiffs, they do not understand how they remained with 16.6Ha only after the initial land measuring 50.79Ha was sub-divided into two. The Plaintiffs' other complaint is that the Defendant has not paid the purchase price despite the suit property being in his name.

11. The subject matter herein is L.R. No. 14812/5. Although the Plaintiffs have alleged that the Defendant acquired more than the 10Ha that he purports to have purchased from the late Ole Kuyo, the Defendant did not find it appropriate to annex on his Replying Affidavit the official search and the copy of the Sale Agreement for the said land to enable the court ascertain the acreage of the land that he purchased.

12. Instead, the Defendant annexed on his Affidavit a copy of a letter dated 19th March, 1999 allegedly authored by the late Lekina Kuyo which is not legible.

13. Although a copy of the Certificate of Title for L.R 14812/5 has been annexed on the Defendant's Replying Affidavit, it is not clear in whose names the other sub-divisions were registered in. However, the Defendant has admitted that the Plaintiffs were only left with 16.6Ha, out of the 50Ha for inheritance.

14. Considering that the court will have to interrogate during trial how the whole piece of land measuring 50Ha was sub-divided, and whether indeed the Plaintiffs were defrauded of any land during the sub-division of the entire land measuring 30Ha, it is only just and equitable that an order of prohibitory injunction do issue pending the hearing of the suit.

15. I say so because the issue of how the entire parcel of land was sub-divided and the beneficiaries of the said sub-divisions will have to be investigated by the court to ascertain if indeed the Defendant is only in possession of 10.14Ha and not more. The Defendant will also have to show that indeed he paid the purchase price for the said land.

16. Although the Defendant deponed that the suit property has since been sub-divided and the mother Certificate of Title closed, there is no evidence before the court that indeed the said sub-division happened.

17. In any event, if the Defendant has sub-divided the suit property, it means that the Plaintiffs will suffer irreparably if the said land is alienated further.

18. For those reasons, I allow the Application in the following terms:

a. A temporary injunction be and is hereby issued restraining the Defendant/Respondent, his servants, agents, employees, relatives or any other person acting through or under his instructions from being on, entering upon, remaining on, erecting any structure, carrying out any development, construction or any activity in and on Land Reference No. 14812/5 and alienating, wasting, damaging, transferring, disposing, charging, dealing with and/or interfering with the Plaintiff's interests in the suit property pending the hearing and determination of this suit.

b. That the costs of this Application be awarded to the Plaintiffs/Applicants.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 12TH DAY OF MAY, 2017.

O.A. ANGOTE

JUDGE