



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND COURT OF KENYA

AT NAKURU

ELC NO.161 OF 2016

WILLIAM MUIRURI GETATA.....PLAINTIFF

VERSUS

EMILY KAYO JOSEPH1ST DEFENDANT

JOSEPH NJOROGE GACHOKA2ND DEFENDANT

RULING

(Application for injunction; principles to be applied; plaintiff claiming that his mother held shares in a land buying company and she transferred these shares to him; plaintiff claiming defendants, who are the registered proprietors acquired the land by fraud; no evidence of transfer of shares; land buying company and first proprietors not enjoined in suit; no complaint raised on how the land moved from the land buying company to current proprietors; difficult to see how fraud will be proved; no prima facie case shown; application dismissed).

1. This suit was commenced on 9 May 2016 by way of plaint. In the plaint, the plaintiff has pleaded that he is the legal owner of the land parcel Dundori/Lanet Block 5/1236 and 1237 (hereinafter referred to as "the suit properties"). He has averred that his mother, one Hellen Wacera Wakitata, was a shareholder of Al-Islamiya Estates Limited and that she made full payment towards the purchase of the suit properties. It is pleaded that the plaintiff's said mother transferred her shares to the plaintiff and was issued with a plot ownership certificate by Al-Islamiya Estates Limited. It is averred that sometimes in October and November 2015, the plaintiff conducted a search and realized that the properties had been registered in the name of the defendants and title deed issued to them. It is the plaintiff's case that the registration of the defendants as proprietors was done fraudulently inter alia through deceit. In the suit, the plaintiff has asked for a cancellation of the title of the defendants and for a permanent injunction to restrain them from the suit properties.

2. Together with the plaint, the plaintiff filed an application for injunction seeking to restrain the defendants from inter alia, occupying, cultivating, or dealing with the suit properties pending hearing and determination of the suit. It is that application which is the subject of this ruling. In the supporting affidavit to the application, the plaintiff has more or less repeated the averments in the plaint, which I have set out above. He has annexed copies of some receipts issued by Al-Islamiya Estates Ltd and a plot ownership certificate. He has averred that the defendants are now in the process of developing the suit properties and that he is apprehensive that they may dispose of the same.

3. Both defendants separately entered appearance but only the 2nd defendant has filed a replying affidavit

to oppose the motion. In his replying affidavit, the 2nd defendant has deposed that he is the owner of the land parcel Dundori/Lanet Block 5/ 1237 (New Gakoe) and he has annexed a copy of the title deed. He has deposed that he purchased the property on 8 October 2015 from one John Kinuthia Kahoro who was initially registered as the proprietor. He has annexed a copy of his title deed. He has further deposed that John Kinuthia Kahoro purchased this property from Al Islamiya Estates Limited on 31 August 2009 having paid the full purchase price of Kshs. 250,000/=. The sale agreement has been annexed. The 2nd defendant has averred that upon purchase of the said property, he embarked on developing it and he was surprised when this case was brought to his attention. He has deposed that he is an innocent purchaser for value and the plaintiff is a stranger to him. He has averred that the orders sought in the application are too wide and cannot attach as they seek to paralyze his use of the land. He has questioned why Al-Islamiya Estates Ltd have not been sued in this case.

4. I have considered the above material alongside the submissions of Ms. Wangari, learned counsel for the applicant. Mr. Ooga for the 2nd respondent wholly relied on the supporting affidavit.

5. What is before me is an application for injunction and to succeed in an application of this nature, one has to demonstrate a prima facie case with a probability of success; demonstrate that he/she stands to suffer irreparable loss unless the injunction is granted; and where the court is in doubt, it will decide the case on a balance of convenience.

6. The case of the plaintiff is that his mother was a share holder of Al-Islamiya Estates and that she fully paid up for her shares and was allocated the suit properties. He states that the shares of his mother were transferred to him and he was allocated a plot ownership certificate. I have looked at the receipts annexed by the plaintiff which are in the name of Hellen Wacera Wakitata. The same show payment for a plot but the exact plot is not indicated in those receipts. I am unable to therefore tie those receipts to the suit properties in issue in this case. I have also not seen any letter from Hellen Wacera Wakitata transferring any of her shares to the plaintiff herein. I have seen a copy of the Plot Ownership Certificates said to have been issued by Al-Islamiya Limited to the plaintiff but there is nothing from the said company to authenticate the said documents. It is also not explained where the plaintiff has been since the said Certificate was issued to him on 25 July 2005. If indeed the quarrel of the plaintiff is that Al-Islamiya Estates Limited wrongfully sold his plots, then I would expect him to have enjoined the said company as a defendant in this case, or if the position as he has recounted herein is supported by Al-Islamiya Estates Limited, I would have expected that there would be an affidavit from the said company, confirming all the matters that the plaintiff has raised herein. No explanation has been given as to why Al-Islamiya Estates Limited have not been sued and there is nothing from them confirming the position of the plaintiff. Neither have the initial proprietors of the land parcels in issue been sued in this case. In other words, the plaintiff does not question the manner in which the initial proprietors obtained title and the manner in which they transferred their title to the current owners. If he does not question their initial title, then I wonder on what basis he can question the titles of the current owners, at least that of the 2nd respondent, who to me appears to be an innocent purchaser for value. Indeed, if there was any fraud, it could only have been perpetuated by Al-Islamiya Estates Ltd and/or the first registered proprietors of the land, but they are not parties herein, and I wonder on what basis the plaintiff will prove that his land was stolen from him without these persons being parties in this case.

7. Based on the material tendered by the plaintiff, I am not persuaded that he has displayed a prima facie case with a probability of success. I am not in doubt, and I therefore need not consider the balance of convenience.

8. Given the above, I proceed to dismiss this application with costs to the 2nd respondent.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 29th day of June 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of:

Ms. Wangari for the plaintiff/applicant.

No appearance on the part of M/s Mwangi Mukira & Co. Advocates for the 1st defendant/respondent

No appearance on the part of M/s Munene Chege & Co. Advocates for the 2nd defendant/respondent.

Court Assistant: Nelima

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU