



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 336 OF 2016

JAMES KAMAU MUTUURA.....PLAINTIFF

VERSUS

DANIEL MBUGUA.....1ST DEFENDANT

PAUL G. KIGUNDA.....2ND DEFENDANT

NGUNDU FARMERS CO-OPERATIVE SOCIETY LTD.....3RD DEFENDANT

STANLEY KAMAU.....4TH DEFENDANT

RULING

The plaintiff is the owner of all that parcel of land known as **Plot No.126/34/5** situated at Kamulu, Nairobi (hereinafter referred to as “the suit property?”). The plaintiff acquired the suit property sometimes in the year 2005 from the 3rd defendant, Ngundu Farmers Co-operative Society Ltd. The plaintiff brought this suit against the defendants seeking a declaration that he is the lawful owner of the suit property and a permanent injunction to restrain the defendants from interfering in any way with the said property. Together with the plaint, the plaintiff filed an application by way of Notice of Motion dated 8/4/2016 seeking a temporary injunction to restrain the defendants from in anyway interfering with his quiet user and possession of the suit property pending the hearing and determination of the suit herein. The application which was supported by the affidavit of the plaintiff was brought on the grounds that the plaintiff is the owner of the suit property and that the 4th defendant entered the suit property without his permission on or about 5/4/2016 and commenced construction of a car wash and petrol station thereon. The plaintiff averred that the 4th defendant refused to stop the said construction works even after being told that there were ongoing court cases over the suit property.

The application was opposed by the 4th defendant through a replying affidavit sworn on 13/5/2016. The 4th defendant contended that he was a stranger to the suit property. The 4th defendant averred that he owns three (3) parcels of land namely, Plot No. 126/34/29, Plot No. 126/34/30 and Plot No. 126/34/69 which he acquired from the 2nd defendant. The 4th defendant averred that his three parcels of land are situated some distance from the suit property which is being claimed by the plaintiff. The 4th defendant averred that he had been in occupation of the said parcels of land since he purchased the same and that the construction complained of by the plaintiff commenced in the year 2011 and not the year 2016 as claimed by the plaintiff. The 4th defendant denied that he had encroached on the suit property. The 4th defendant contended that the plaintiff seems not to be aware of the physical location of his property. The plaintiff filed a further affidavit with leave of the court in which he contended that the

three (3) parcels of land claimed by the 4th defendant resulted from the illegal sub-division of the suit property and that the same were part of illegal sub-divisions of the suit property which were sold by the 1st, 2nd and 3rd defendants to unsuspecting members of the public.

The plaintiff's application was argued by way of written submissions. I have considered the application together with the affidavit filed in support thereof. I have also considered the replying affidavit which was filed in opposition thereto. Finally, I have considered the submissions on record. The principles upon which this court exercises its discretion in applications for a temporary injunction were laid down in the case of *Giellavs.Cassman Brown & Co. Ltd [1973] E.A 358*. An applicant for interlocutory injunction must establish a *prima facie* case with probability of success and must also demonstrate that he will suffer irreparable harm unless the order is granted. In the event that the court is in doubt as to the foregoing, the application would be determined on a balance of convenience. The parcels of land in dispute in this suit have no titles. The plaintiff and the 4th defendant have certificates of ownership issued by the 3rd defendant. The 3rd Defendant did not respond to the plaintiff's application. I am unable to determine at this stage whether the three (3) parcels of land being claimed by the 4th defendant are sub-divisions of the suit property. I am also unable to determine whether the suit property and the said parcels of land are situated on the same location on the ground and if so, who as between the plaintiff and the 4th defendant has superior right over the same.

Due to the foregoing, I doubt the merit of the plaintiff's case against the defendants. I also doubt whether the plaintiff would suffer irreparable loss if the orders sought are not granted. In view of the foregoing, the plaintiff's application falls for consideration on a balance of convenience. I am of the view that in the circumstances of this case, justice would be better served if the prevailing status quo is maintained pending the hearing and final determination of the rights of the parties. I therefore disallow the plaintiff's application dated 8/4/2016 and order that pending the hearing and determination of this suit, the status quo prevailing as of the date hereof relating to the title, possession, and use of all those parcels of land known as Plot No. 126/34/5 – Kamulu, Plot No. 126/34/29, Plot No. 126/34/30 and Plot No. 126/34/69 shall be maintained. The costs of the application shall be in the cause.

DELIVERED and SIGNED at NAIROBI this 27th day of June, 2017.

OKONG'O

JUDGE

Ruling read in open court in the presence of:

N/A	for the Plaintiff
N/A	for the 1 st Defendant
N/A	for the 2 nd Defendant
N/A	for the 3 rd Defendant
N/A	for the 4 th Defendant
Kajuju	Court Assistant