



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

CIVIL SUIT NO. 681 OF 2017

REUBEN SARUNI OLE NAKUO.....PLAINTIFF

VERSUS

CHIEF LAND REGISTRAR.....1ST DEFENDANT

COUNTY LAND REGISTRAR.....2ND DEFENDANT

CHRISTOPHER OLE SOKOTIO.....3RD DEFENDANT

KOTATA OLE SOKOTIO.....4TH DEFENDANT

RULING

The application before this court is the Plaintiff's Notice of Motion dated 8th February, 2017 brought pursuant to Section 1A, 1B, 3 & 3A of the Civil Procedure Act, Order 40 Rules 1,2 & 4 and Order 51 Rule of the Civil Procedure Rules and all the other enabling provisions of the law. The application is based on the following grounds which in summary is that on 3rd January, 1999 the Plaintiff bought land reference No. KAJIADO/KAPUTIEI - NORTH/4063 (suit land) from JOSEPH KAMAKEYI NEPATAU. That the suit land was a subdivision of KAJIADO/KAPUTIEI - NORTH/1147 which initially belonged to SOKOTO OLE NGONO, and after purchase of the suit land, the Plaintiff lodged documents for transfer but the same was rejected since the Green Card to the said parcels were missing. The Plaintiff later came to learn that the sons of SOKOTIO OLE NGONO namely CHRISTOPHER OLE SOKOTIO and KOTATA OLE SOKOTIO hurriedly, illegally, criminally and fraudulently in collusion with the 2nd Defendant and/or its agents claimed that their father's title deed to KAJIADO/KAPUTIEI - NORTH/1147 had been misplaced and they obtained another title to this parcel which they have sold to several people. That this was done despite the title deed to KAJIADO/KAPUTIEI - NORTH/1147 having been closed on subdivision and new title deeds for Land Reference Nos. KAJIADO/KAPUTIEI - NORTH/4062 and KAJIADO/KAPUTIEI - NORTH/4063 issued in the names of SOKOTIO OLE NGONO and JOSEPH KAMAKEYI NEPATAU respectively. The Plaintiff referred the matter to the defunct Kajiado Land Disputes Tribunal which found out the beacons to KAJIADO/KAPUTIEI - NORTH/4063 are still intact, the second title was obtained fraudulently and ordered that KAJIADO/KAPUTIEI - NORTH/4063 should be transferred to REUBEN SARUNI OLE NAKUO. The said Tribunal findings were confirmed by the Principal Magistrate's Court Kajiado on 11th July 2013. Despite the Tribunal's findings being in favour of the Plaintiff, he has not been able to have the land transferred to him as the green card to the suit land is still missing.

The application is supported by the affidavit of REUBEN SARUNI OLE NAKUO the Plaintiff herein where he deposes that he is highly convinced that the green cards to parcels numbers KAJIADO/KAPUTIEI - NORTH/4062 and KAJIADO/KAPUTIEI - NORTH/ 4063 which are now suspiciously missing were plucked from the binder by the sons of the late SOKOTIO OLE NGONO in collusion with the 2nd Defendant, its agents and/or clerks working in lands registry at Kajiado in an attempt to conceal their fraudulent acts and to enable them sell the land and dispossess him of what he rightfully acquired from JOSEPH KAMAKEYI NEPATAU.

The 1st and 2nd Defendant were served on 17th May, 2017 and 13th June, 2017 respectively but failed to attend court nor file a replying affidavit. The 3rd and 4th Defendant were served on 26th May, 2017 but also failed to attend nor file a replying affidavit. The Court notes from the affidavit of service that all the Defendants were duly served. On 14th June 2017, the hearing of the Notice of Motion dated the 8th February, 2017 proceeded unopposed.

The Plaintiff's counsel Mr. Mwangi reiterated the facts of the case and stated that they were seeking prayers 2, 3, and 4 of the Notice of Motion dated the 8th February, 2017 pending the hearing and determination of the suit. He stated that the Plaintiff was apprehensive that the 3rd and 4th Defendants shall not hesitate to dispose of property in a bid to defeat his title to the suit land.

Issues and Determination

Upon consideration of the materials presented and arguments canvassed by the Plaintiff/Applicant in respect to the Notice of Motion dated

8th February, 2017 the Court has analyzed that the main issue for determination at this interlocutory stage is whether the Plaintiff is entitled to the injunctive orders sought.

The Court notes that the issue of title to the suit land had been heard and determined by the defunct Kajiado Land Disputes Tribunal which found out the beacons to KAJIADO/KAPUTIEI - NORTH/4063 are still intact, and ordered that the said title should be transferred to REUBEN SARUNI OLE NAKUO (Plaintiff herein), with the Tribunal findings being confirmed by the Principal Magistrate's Court Kajiado on 11th July 2013. There is no evidence that these findings were challenged nor appealed from. The Court further notes that the Plaintiff is apprehensive as he has not been able to register the transfer in his name since the green card to the KAJIADO/KAPUTIEI - NORTH/1147 is missing.

Since the application proceeded unopposed and there is no evidence from the Defendants rebutting the Plaintiff's claim, I will not delve into the other merits of the application but proceed to allow prayer 3 of the Notice of Motion dated the 8th February, 2017 as follows:

3) Pending the hearing and determination of this suit, this Honourable Court be pleased to grant an order compelling the 2nd Defendant or its agents to place restrictions on ALL the title deeds/green card to all subsequent subdivisions of Land Reference Number KAJIADO/KAPUTIEI - NORTH/1147 done after 21st August 1996 prohibiting any further registrations and/or dealings whatsoever.

The costs will be in the cause.

Dated signed and delivered in open court at Kajiado this 31st day of July, 2017.

CHRISTINE OCHIENG

JUDGE