



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C CASE NO. 162 OF 2017

GEORGE PETER MWAURA MUIRURI

APPLICANT/PLAINTIFF

VS

FRANCIS NGIGI NGUGI

BETH WANJIKU NGUGI

Being the administrators of the estate of

SAMUEL NGUGI WANGUKU

1ST RESPONDENT/ DEFENDANT

ESTHER WANJIRU NGERU

2ND RESPONDENT/DEFENDANT

RULING

1. The Applicant filed a suit against the Respondents seeking among other orders, a permanent injunction restraining the defendants from evicting him or interfering with his possession/occupation of a portion of Loc 5/Mariani/513 (suit property) measuring 1.5 acres. He also urged the Court to compel the defendants to transfer to him a portion of Loc 5/Mariani/513 measuring 1.5 acres or in an alternative prayer refund the purchase price at the current market value of the suit property and the developments thereon.

2. Simultaneously the Applicant filed a Notice of Motion seeking the following orders; -

a) Spent

b) That this honourable Court be pleased to issue an order of temporary injunction restraining the defendants by themselves, servant, employee or agents or anybody else claiming through them from evicting demolishing harassing intimidating or in any other manner interfering with the plaintiff/applicant possession/occupation on the land parcel 1.5 acres of Loc 5/Mariaini/513 pending the hearing and determination of this application.

c) That this honourable Court be pleased to issue an order of temporary injunction restraining the defendants by themselves, servant, employee or agents or anybody else claiming through them from evicting demolishing harassing intimidating or in any other manner interfering with the plaintiff/applicant possession/occupation on the land parcel 1.5 acres of Loc 5/Mariaini/513 pending the hearing and determination of this suit.

d) That this honourable Court be pleased to order the registration of an inhibition on land parcel Loc 5/Mariani/513.

e) That costs of this application be provided for.

3. The application is supported by the affidavit of the Applicant dated the 20th February 2017 and based on the grounds stated therein. The Applicant states that he purchased a portion of Loc 5/Mariani/513 (suit land) measuring 0.5 acres from the 1st Respondent (as administrator of the estate of his later father) and one acre from the 2nd Respondent sometime in 2008 -2009 and paid the full purchase price of Kenya Shillings Four Hundred and Fifty Thousand (Kshs. 450,000/-). At the time of entering the agreement of sale the suit property was registered in the name of Samuel Ngugi Wanguku who died on the 23rd March 1991 and the respondents are the administrators of the estate of the deceased. The sale agreement was subject to the 1st Respondent obtaining the confirmed letters of grant of administration in respect to the estate of the late Samuel Ngugi Wanguku as well as consent of the Land Control Board for subdivision and transfer of the parcel to the Applicant. The agreement of sale also contained special conditions to wit; That the property was sold free from all encumbrances; That Vendor (Respondents) were to meet the costs relating to the succession cause No 1231 of 1991 in respect to the estate of Samuel Ngugi Wanguku, the deceased; that the Vendor was to apply and obtain the Land control Board consent in respect of the subdivision and transfer of the 1.5 acres of the land; various express warranties were given by the Vendors to the applicant in the said agreement.

4. Completion date of the transaction was to be on or after obtaining the consent of the Land control Board and similarly grant of administration and the confirmation of grant for the estate of the deceased.

5. It was a term of the agreement that the vendors would give vacant possession of the suit property to the applicant on signing of the agreement. It would appear that the applicant was indeed granted possession which he has had for the last eight years.

6. The applicant avers that the respondents have refused to transfer the portion of 1.5 acres of the suit property to him despite him being in possession, occupation and carrying out developments of the same without any hindrance from the respondents. In addition, that the defendants are keen to subdivide the land and distribute the same to themselves pursuant to the confirmation of grant to his exclusion hence the reason for filing suit. That if evicted by the respondents he will be rendered homeless and destitute as he has no other place to settle.

7. In resisting the application, the respondents donot dispute entering into an agreement for sale with the applicant but insist that the same is null and void because the 1st Respondent lacked legal capacity to enter in to the agreement with the applicant. Further that the suit land being agricultural required the consent of the Land Control Board which was not obtained. The respondents donot dispute that the applicant is in possession of the land but term it as trespass onto the suit land. The respondents argue that in any event the agreement for sale is inadmissible on account of lack of payment of stamp duty on the agreement for sale.

8. Both parties filed written submissions to support their positions, which submissions I have reviewed in reaching this determination.

9. The learned counsel for the applicant submitted that the at the time of entering the agreement of sale on the 17th July 2009 Francis Ngugi Ngugi was an administrator of the estate of his late father having been appointed on the 3rd January 1992. That he therefore had capacity to transact in his capacity as the administrator of the estate. That it is clear that the respondents are attempting to collude to defeat the claim of the applicant notwithstanding having received the full purchase price of the suit land from the applicant. In that regard they are therefore estopped from disowning the agreement. That they are stopped from breaching a promise that was relied on by the applicant to their unjust enrichment. Equity will not allow them to keep the money and the land.

10. The applicants contend that since the completion was to take place after the confirmation of grant of administration, there is nothing to bar the respondents from applying for the consent of the Land control board. The applicants have relied on the case of the estate of **John Kagunga Njoroge (deceased)**

Succession cause No 256 of 2007 to support their prayer for grant of interlocutory injunction.

11. The learned counsel for the respondents submitted that the 2nd defendant was a beneficiary of the undivided estate and therefore had no capacity to sell the land and in any case did not obtain the consent of the other beneficiaries and administrators of the estate. That generally in such a case the proceeds of sale would be for the benefit of all the beneficiaries.

12. That the agreement between the applicant and Francis Ngigi Ngugi is illegal on account of lack of agreement between the beneficiaries nor leave of the court as a result of which no good title was transferred to the applicant. The land control board consent was not obtained as provided for under the Land Control Act. That due to the reasons adduced herein the applicant remains a trespasser on the land who should be evicted to pave way for the land to be subdivided and given to the beneficiaries pursuant to the confirmed grant dated the 12th February 2014.

13. The Applicant relied on the cases cited as **Bob Njoroge Ngarama Vs Mary Wanjiru Garama & Anor succession cause No 307 of 1995; Kariuki Vs Kariuki CA No. 26 of 1979** to support his position.

14. The issues for determination is whether the applicant has made a case for granting a temporary injunction.

15. The parties are not disputing the existence of agreement of sale dated the 17th July 2009 and its ancillary agreement signed in 2008 or thereabouts but which was incorporated in the former agreement. The intentions of the parties are clearly captured in the said agreement in great detail showing their various obligations therein. The issue of whether the said Francis Ngigi Ngugi had capacity to enter into the agreement is a matter for the trial court to determine.

16. It is not in dispute the suit property is agricultural land and therefore any disposition in the land is subject to the consent of the land control board. This matter is reserved for the trial.

17. In the suit filed by the applicant on the 20th February 2017, the applicant has urged this Court to grant a temporary injunction restraining the defendant from evicting him or interfering with his possession or occupation of the portion of the suit property. It is clear that even though the applicants claim under prayer a) of the plaint has been assailed on the basis of possible legal technicalities, this court notes that the respondents have admitted to entering into the agreement of sale as well as receipt of the purchase price. In the alternative, the applicant prayed for a refund of the purchase price at market rates of the land and the developments. The question is whether the respondents have demonstrated to this Court that they are in a position to meet the costs of compensation sought by the applicant. The answer is in the negative. In that case therefore it would be unconscionable for the respondents to shield themselves with the defense of illegality and voidance of the agreement when they had factual knowledge and of the nature of the transaction they entered into.

18. Granting possession to the applicant must have been done as a precaution to occupation pending the completion of the same. The fact that even after being granted a confirmation of grant as administrators and beneficiaries, they still have not taken steps to regularize the transaction smacks of bad faith on the part of the respondents.

19. For the reasons stated above, this Court holds that the applicant has demonstrated a prima facie case in respect to prayer c). in the application as follows;

a) In the circumstances, the balance of convenience tilts to this Court granting the interlocutory injunction restraining the respondents, by themselves, servants, employee or agents or anybody else from evicting harassing demolishing intimidating or in any other manner interfering with the applicant's possession/occupation of the 1.5 acres of Loc 5/Mariani/513 until the hearing and determination of the suit.

b) The costs of this application to be borne by the respondents.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 20TH JULY 2017.

J. G. KEMEI

JUDGE