



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C NO.144 OF 2017

SUSAN WANGUI MUIRURI.....APPLICANT

=VS=

GABRIEL NGUGI MUIRURI.....1ST DEFENDANT

ANDREW KARANJA NGUGI.....2ND DEFENDANT

PETER MUIRURI NGUGI.....3RD DEFENDANT

RULING

1. The Plaintiff filed the Notice of Motion dated 19th October, 2016 seeking the following orders:-

(a) THAT this Honourable Court be pleased to issues a temporary order of injunction restraining the Defendants whether by themselves, their servants, agents and/or employees, from doing the following acts or any of them, that is to say, interfering with the Plaintiff or the Plaintiff's proprietary right of possession and/or access, or otherwise howsoever from interfering with the ownership to and or interest in all that piece of land known as LOC.1/KIUNYU/1439 pending the hearing and determination of this suit and/or until further orders of this Honourable Court.

(b) THAT the costs of this Application be awarded to the Plaintiff/Applicant.

2. The Application is based on the grounds as stated below;

a) The Plaintiff/Applicant is the registered proprietor of all that parcel of land known as or otherwise described as LOC.1/KIUNYU/1439 (herein referred to as "the suit property").

b) The Defendants have illegally and without any colour of right entered into the suit property and took possession of the same and have thereafter, wrongfully remained in possession of the said suit property.

c) The Defendants wrongfully claims that they have beneficial interest to the suit property.

d) By reason of the matters aforesaid, the Plaintiff has been deprived of the use and enjoyment of the property and has therefore suffered loss and damage.

e) The Defendant's/Respondent's actions are highly injurious and prejudicial to the interest of the Applicant/Plaintiff.

f) The Applicant/Plaintiff is further apprehensive that if this Honourable Court does not grant the orders sought herein there may be continued bloodbath and the subject suit property may be wasted and alienated beyond the Plaintiff reach.

g) The Applicant stands to suffer irreparable harm unless the Respondents are restrained from their actions.

3. The Application is supported by the Affidavit sworn by the Applicant. In it the applicant deponed that she is the registered proprietor of the LR 1439, having acquired the same by being a beneficiary of the estate of her father the late Jacob Muiruri King'ara who died in 1976. She claims that her portion overlapped on the developments to that of her brother and 2 sons who are 2nd - 3rd Defendants respectively. That the Defendants have trespassed onto her land and despite several requests to vacate the Defendants have refused to do so.

4. In a Supplementary Affidavit filed on 17.11.16 the Applicant further deponed that the Defendants are constructing houses on her part of the property and she annexed pictorials for unfinished houses to support her assertion. That the 1st Defendant is the beneficial owner of LR No. 1438 which is still registered in the name of the Public Trustee.

5. The Defendant responded to the application vide a Replying Affidavit dated 1.3.17 sworn by the 1st Respondent on his behalf and that of his Co-Respondents. He urged the Court to dismiss the application on grounds inter alia that it does not meet any of the three requirements for granting an interlocutory injunction. He termed the application as misconceived, bad in law, incompetent, an abuse of the Court. He confirmed that the suit property is a resultant subdivision of LR/233 which belonged to their deceased father. He challenged the will dated 1975 as ambiguous and incapable of being executed. He avers that he has been in occupation of the suit land since 1975 and has developed the same including building houses for his two sons.

6. Further he contends that the Applicant may have colluded with the Public Trustee in the issuance and transfer of the documents in respect to the suit property to the Applicant. He termed them as fraudulent and corrupt.

7. When the matter came for hearing on 19.4.17 the application was canvassed by way of oral arguments.

8. The Applicant gave evidence that LR No. 233 was subdivided by the Public Trustee into 3 plots;-

(a) 1438 – registered in the names of Public Trustee to hold to the benefit of the 1st Defendant.

(b) 1439 – registered in her name.

(b) 1437 – registered in the name of Public Trustee to hold for the benefit of her deceased brother in law, Francis Ndungu.

That the land was surveyed and sub-divided by the Public Trustee. That the 1st Defendant refused to go to the Land Registrar's office to be issued with his title. That he was uncooperative during the subdivision. That she has built a house on her portion and even buried her child on the said suit property. That she was shown her portion by her late father. She pleaded with the Court to grant her an injunction to preserve her interest in the suit land.

9. On his part, the 1st Defendant states that his late father's land has not been subdivided. He pointed out that a surveyor attempted but he was rebuffed by the family. He acknowledges that the title of his late father's land is with Public Trustee but he has never visited the office of the Public Trustee to know how the distribution was done. He confirms that he and his sons are living on the land and that his two sons are now building their houses on the said suit land. That he has been on the suit property since he was born.

10. The 2nd and 3rd Defendant adopted the witness statements and evidence of the 1st Defendant as their evidence to the court.

11. In response the Applicant stated that her father's estate was left in the hands of the public trustee. She clarified that her late father was married with two wives. That Plot No. 233 was distributed in the will as follows:-

i. 2 Plots to the house of Gachiru.

ii. I plot to the house of Wanjiku. That her claim on suit property/1439 is coming from the portion of the house of Wanjiku, her mother.

12. Applying the threshold of granting interlocutory injunction is as set in the case of **Giella Vs. Cassman Brown (1973) EA 358**, the Applicant is the registered proprietor of the title of 1439 as evidenced by the copy of the Title deed. The Registration of Land Act Section 26 as follows;

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or

b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

No evidence has been presented before the Court to show that the title was obtained illegally or fraudulently. In the absence of any evidence to the contrary this court holds that the Applicant has demonstrated a Prima facie case with a probability of Success.

13. The issues relating to how the subdivision of the mother title was done by the Public Trustee and the distribution thereof is a matter for trial at the court. The same applies to the distribution of the land to the Defendants by the Public trustee.

14. In respect to irreparable damage, being suffered by the Applicant, the Applicant claims that she stands to suffer loss as the Defendant continues to commit acts of waste by constructing on the land thus changing the character of the land.

15. Based on the above evidence, the Court finds that the Application is merited and grants the orders as follows;

a). That a temporary injunction restraining the defendants whether by themselves, their servants, agents and or employees from occupying, interfering with the plaintiff's proprietary right of possession/access of all that land known as Loc1/Kiunyu/1439 pending the hearing and determination of the suit or until further orders of this honourable Court.

b). Parties being related, each party to meet their costs of this application.

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

J. G. KEMEI

JUDGE