



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO.1 OF 2017

VINCENT MOSE OMARIBA.....1ST APPLICANT

ABEL GICHANA OMARIBA (*suing as legal representative
of the Estate of FLORENCE K. OPINI*)...2ND APPLICANT

VERSUS

NATIONAL LAND COMMISSION.....1ST RESPONDENT

CHIEF LAND REGISTRAR.....2ND RESPONDENT

LAND REGISTRAR

TRANS NZOIA COUNTRY.....3RD RESPONDENT

TRANS NZOIA

COUNTY GOVERNMENT.....4TH RESPONDENT

RULING

1. The Applicants commenced suit by way of a plaint dated 5/1/2017. On the same day an application was filed by the applicants which is the subject of this ruling. The application is also dated 5/1/2017. I reproduce the orders sought in the language they have been framed as follows:

1. That service of this application be dispensed with in the first instance as the object of this application and will be defeated

2. That Honourable Court be pleased to grant an injunction restraining the defendants by themselves, their agents and/or servants from transferring, entering, constructing any structure or in any way interfering with the plaintiffs' quiet enjoyment of all that land known as Kitale Municipality Block 8/88 pending the hearing and determination of this application

3. That Honourable Court be pleased to grant an injunction restraining the defendants by themselves, their agents and/or servants from transferring, entering, constructing any structure or in any way interfering with the plaintiffs' quiet enjoyment of all that land known as Kitale Municipality Block 8/88 pending the hearing and determination of this suit.

4. The 3rd respondent be ordered to effect registration for the suit parcel in favour of the estate of Florence Kemunto Opini (Deceased).

5. That there be an injunction for registration of the suit parcel Kitale Municipality Block 8/8 pending the determination of ownership.

6. The costs of this application be provided for.

2. The 4th defendant entered appearance on 19/1/2017 and the 1st defendant on 20/2/2017. However, only the 4th defendant has filed a reply to the application dated 5/1/2017. In the Affidavit of Lucy Kihamba sworn on 24/3/17 it is averred that the land in question is situated in Trans Nzoia within the 4th Respondents jurisdiction and that it is the 4th Respondent's duty to hold the said land in trust for the residents and that the property was allocated long ago and that upon such allocation, it ceased being under control of the 4th defendant. The 4th defendant further avers that the mandate to allocate and register land is not within the 4th defendant's powers and that the dispute herein is between two private individuals. The 4th defendant denies playing any role in the matter and therefore the plaintiff has no cause of action against it.

3. The applicants' case is that they are legal representatives of the Estate of Florence K. Opini (deceased); the deceased purchased plot No.Kitale Municipality Block 8/88 from one Kennedy Kipkemoi in 1998;the said vendor had been allotted the land in 1994; Sheconstructed a residential house in the year 2000; Later a Certificate of Lease was issued to the deceased in 2005; The deceased died in 2011; In 2016, the 1st respondent through the 2nd Respondent instructed the 3rd Respondent to unlawfully and unprocedurally process the registration of the suit property to a third party and the applicants learnt that their records were missing from the respondent's offices. The applicants allege fraud against the 1st, 2nd and 3rd respondents. They seek among other orders a declaration that the Florence K. Opini is the rightful owner of L.R No.Kitale Municipality Block 8/88 and an injunction to restrain the respondents from interfering or dealing with the suit land.

4. I have considered the nature of the application and the evidence in support thereof. It is alleged that the deceased built a house on the plot in the year 2000; that is as per the plaint. The plans and drawings show dates in the year 2014; approval appears to have been done in the year 2015, yet the deceased died in the year 2011. Some of the documents allege the loss of title deeds was reported to Machakos Police Station while others state the report was made at Makuyu Police station.

5. The interested party has not been enjoined to these proceedings yet his name is known to the applicants. The rates payments receipts read No.2116/88 while the Lease and Certificate of Lease read Kitale Municipality Block 8/88.A section of the documents in the record reads that the deceased purchased the plot from one Kennedy Kipkemoi while another section reads that she purchased the plot from one Michael Seronei. The letter dated 15/12/2016 said to originate from the Principal Land Administration Officer Trans Nzoia/West Pokot Counties raises the issue of this discrepancy at its fourth paragraph.

6. The issues listed at page 3 of their submissions are to be dealt with at the main hearing of the suit and not at this interlocutory stage. For now, this court's main interest is in knowing whether the applicants have established that they have a prima facie case with probabilities of success.

7. There are numerous unexplained gaps left by the plaintiff's in this matter. I find that they have not established a prima facie case with probability of success. I therefore dismiss the application dated 5/1/17. Costs will be in the cause.

Dated, signed and delivered at Kitale on this 24th day of August, 2017.

MWANGI NJOROGE

JUDGE

24/8/2017

Before - Mwangi Njoroge Judge

Court Assistant – Isabellah/Picoty

Weche for Plaintiff/Applicant

N/A for respondents

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

24/8/2017