



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

E.L.C. 43 OF 2016

JOSEPH NTHIGA MUNYI.....PLAINTIFF

VERSUS

NEPHAT GIKUNJU KIRINGA.....1ST DEFENDANT

PETER MURIUKI NJERU.....2ND DEFENDANT

RULING

1. By a notice of motion dated 24th February 2017, the Plaintiff sought various orders against the Defendant but the material one for purposes of this ruling is an order of temporary injunction to restrain the Defendants from sub-dividing, transferring, alienating or interfering with the Plaintiff's occupation of *Title No. Mbeere/Kirima/1087* (hereinafter called the 'suit property') pending the hearing and determination of the suit.

2. The application was based upon an alleged sale agreement between the Plaintiff and the 1st Defendant for the latter to sell the suit property to the former. It was supported by an affidavit sworn by the Plaintiff to which he annexed 9 exhibits. It was stated in the said affidavit that on or about 17th February 2017, the 1st Defendant visited the suit property accompanied by a surveyor with a view to sub-dividing it. He further stated that the Defendants do not reside on the suit property and that they do not utilize any part thereof.

3. The 1st Defendant filed a replying affidavit sworn and dated 8th March 2017 in opposition to the said application. He stated that he was the registered owner of the suit property and denied that he ever sold the entire parcel of land to the Plaintiff. He further stated that he had agreed to sell only 5 acres out of the suit property but that the Plaintiff had fraudulently prepared an agreement for the entire land and that he had successfully challenged the said fraudulent transaction before the Judicial Review Court.

4. The 1st Defendant further denied that the Plaintiff was residing on the suit property or that he had threatened him with eviction. He asked the court to dismiss the Plaintiff's said application with costs since the orders sought would prevent him from exercising his proprietary rights.

5. By consent of the parties, they agreed to dispose of the said application through written submissions. The Plaintiff filed his written submissions on 26th May 2017 whereas the 1st Defendant filed his on 29th June 2017.

6. The main issue for consideration is whether or not the Plaintiff has satisfied the requirements for the grant of an order of interlocutory injunction as set out in the case of ***Giella Vs Cassman Brown [1973]***

EA 358. It would appear from an examination of the evidence on record that the 1st Defendant is the registered proprietor of the suit property whereas the Plaintiff seems to be a purchaser for value. A copy of a sale agreement has been exhibited by the Plaintiff whose accuracy has been disputed by the 1st Defendant. The 1st Defendant claims to have intended to sell only 5 acres and not his entire property. The validity of the consent of the Land Control Board has also been disputed by the 1st Defendant.

7. The copy of the sale agreement which the Plaintiff exhibited is dated 22nd May 2009 whereas the consent of the Land Control Board (LCB) was granted on 29th October 2010. In my view, this puts into serious doubt the validity of the agreement for sale between the parties in view of the provisions of **section 8 of the Land Control Act (Cap 302)** which requires such consent to be obtained within 6 months. However, that issue should be conclusively determined at the trial thereof.

8. In view of the above, this court is not satisfied that the Plaintiff has made out a *prima facie* case with a probability of success at the trial. In that case, the court need not consider the other two principles for the grant of an interlocutory injunction. The Plaintiff's application is for rejection. However, in view of the fact that the suit property is the subject matter of this suit, the court holds the view that it is necessary to preserve the subject matter pending the hearing and determination of the suit. The purpose of the Plaintiff's suit may be defeated if the suit property is disposed of or otherwise alienated before the suit is heard and determined. See **Shivabhai Patel Vs Manubhai Patel [1959] EA 907.**

9. So what is the appropriate order to make for preservation of the subject matter of this litigation? This court is inclined to make an order of inhibition to prevent any further dealings with the suit property under **section 68 of the Land Registration Act 2012** pending the hearing and determination of the suit.

10. In the result, the court makes the following orders:

- a. The Plaintiff's notice of motion dated 24th February 2017 is hereby dismissed with costs.
- b. An order of inhibition is hereby issued to prevent any dealings with *Title No Mbeere/Kirima/1087* pending the hearing and determination of this suit.
- c. Orders accordingly.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **28th** day of **JULY, 2017**

In the presence of Mr Okwaro for the Defendants and in the presence of Mr Kibet holding brief for Ms Muthike for the Plaintiff and Mr Okwaro for the Defendants.

Court clerk Njue/Leadys

Y. M. ANGIMA

JUDGE

28.09.17