



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT NYAHURURU

ELC CASE NO 323 OF 2017

KAMAU MBOGO.....PLAINTIFF/APPLICANT

VERSUS

SETTLEMENT FUNDS TRUSTEES.....DEFENDANT/RESPONDENT

RULING

1. Before me for determination is the Notice of Motion dated 4th May 2017 brought under *Sections 68(1) of the Land Registration Act, Order 51 Rule 1, of the Civil Procedure Rules, and all other enabling provisions of the law.* The applicant has sought for these orders.

i. Spent.....

ii. Spent.....

iii. That pending the hearing and determination of this suit or further orders of this court, an order be issued inhibiting any dealings over L.R NYANDARUA/OL ARAGWAI/613.

iv. That costs of this application be paid by the Defendants/Respondents.

2. The Application was premised on the grounds that:

a) The Plaintiff is seeking for a declaration that the excision of 4.4 acres out of L.R NYANDARUA/OL ARAGWAI/615 and subsequent creation of plot L.R NYANDARUA/OL ARAGWAI/613. And its transfer to the defendant was illegal and unlawful.

b) That the Plaintiff is further seeking for an order directing the Defendant to transfer NYANDARUA/OL ARAGWAI/613 to him.

c) That it is in the interest of justice and in order to avoid having a judgment that would be in vain, that orders of inhibition be registered over NYANDARUA/OL ARAGWAI/613 pending the hearing and determination of this suit.

d) That the aforesaid inhibition orders will be for the sole purpose of preserving the status quo in as far as any registration is concerned touching on the said parcel of land.

e) That no prejudice will be caused to the defendant as the sad parcel of land will remain intact and in its name pending the hearing and determination of this suit.

3. The Application was supported by an affidavit sworn by Mr. Kamau Mbogo on the 4th May 2017.

4. When the matter came before me ex-parte under a certificate of urgency, on the 8th May 2017, I directed that the same to be served for hearing inter-parte on the 13th May 2017.

5. Service was effected and received and an affidavit of service to that effect filed in court on the 13th June 2017.

6. Despite service, the Defendant/Respondent failed to file their response or appear in court on the scheduled date to which the court having satisfied itself that service was properly effected, proceeded to hear Counsel for the Applicant ex-parte on his application and thereafter gave a date for the ruling.

7. Briefly the Plaintiff/Applicant has come to court seeking for inhibitive orders against the Defendant/ Respondent from dealing with land

L.R NYANDARUA/OL ARAGWAI/613 pending the hearing and determination of this suit.

8. Applicant averred that he was allocated Plot No. 215 Ol Aragwai Scheme in 1963 by the defendant wherein he was shown the boundaries of the said piece of land.

9. Subsequently on competition of the land adjudication of the scheme, a Registry Index Map (RIM) was prepared which confirmed the boundaries of the land allocated to him and he took possession of the same.

10. Later the Respondent, without notice, authority or consent of the Applicant, caused a portion measuring 4.4 acres to be excised from Plot No. 215 Ol Aragwai Scheme, gave it Land Reference No. Plot 613 Ol Aragwai Scheme, and registered in its name but never took possession of the same.

11. That the applicant still in possession of the whole parcel of land despite Plot No. 613 Ol Aragwai Scheme having been excised from Plot No. 215 Ol Aragwai Scheme.

12. The applicant averred that the process of excising Plot No. 613 Ol Aragwai Scheme from Plot No. 215 Ol Aragwai Scheme and transferring the same to the Defendant/Respondent was illegal and unlawful and seeks that the court to issue prohibitive orders to the Defendant/Respondent estopping them from dealing with Plot No. 613 Ol Aragwai Scheme so as not to defeat the substratum of the suit and as to preserve the subject suit.

13. The Notice of Motion was canvassed by way of oral submissions by Counsel for the Applicant. There was no response from the Respondent.

14. I have carefully considered the submissions, the annexed annexures herein, and the relevant law and proceed to make the following finding:-

15. The Applicant herein was allocated the Plot No. 215 Ol Aragwai Scheme in 1963 by the Defendant/ Respondent as per the allocation letter herein attached as annexure KM1, wherein the Applicant accepted the same vide the acceptance letter dated 7th December 1963.

16. Subsequently upon competition of the land adjudication of the scheme, a Registry Index Map (RIM) was prepared which confirmed the boundaries of the land allocated to him. He then took possession of the land.

17. Later the Defendant/Respondent caused a portion of the land measuring 4.4 acres to be excised from Plot No. 215 Ol Aragwai Scheme, gave it Land Reference No. Plot 613 Ol Aragwai Scheme and went ahead to register it in its name. This is evidenced in the search certificate marked as annexure 4.

18. The applicant is still in possession of the whole parcel of land despite Plot No. 613 Ol Aragwai having been excised from Plot No. 215 Ol Aragwai Scheme since the Respondent has not taken possession of the same.

19. The Applicant has now come to court seeking for an order of inhibition, which is not an injunction as such. The power of the court to order for inhibition is provided for under *Section 68(1) of the Land Registration Act*, which provides that:-

“ the court may make an order (herein referred to as an inhibition) inhibiting for a particular time or until the occurrence of a particular events or generally until a further order, the registration of any dealing with any land lease or charge.”

20. This provision gives the Court discretionary powers to issue such an order.

21. Having considered the Applicant's Notice of Motion dated 4th May 2017, which was not opposed, and the fact that the Plaintiff has been in possession of Plot No. 215 Ol Aragwai Scheme including the suit land, the Court finds the said application merited and allows the same in terms of *prayer No. iii and iv* that pending the hearing and determination of this suit an order is hereby issued inhibiting any dealings over L.R NYANDARUA/OL ARAGWAI/613. Costs to be in the cause.

Dated and delivered at Nyahururu this 26th day of September 2017.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE