



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC NO. 508 OF 2017

(formerly Nairobi ELC No. 992 of 2016)

CAROLINE SABIRI MANYANGE.....PLAINTIFF

VERSUS

NJERI ENE YAILE.....1ST DEFENDANT

MARGARET YAILE.....2ND DEFENDANT

RULING

The application before the Court is the Plaintiff's Notice of Motion dated 15th August, 2016 brought pursuant to Order 40 rules 1, 2 & 4 of the Civil Procedure Rules and Section 1A, 1B & 3A of the Civil Procedure Act and all the other enabling provisions of the law. The application is based on the grounds that the Plaintiff and 1st Defendant entered into separate sale agreements for the sale of property known as LR NO. KAJIADO/OLCHORO - ONYORE/13165 measuring 1.85 hectares subdivided into parcel No. 20503 and 20504 under specific terms of the agreements. The Plaintiff paid the agreed purchase price including an overpayment. On 10th August, 2016 the 1st Defendant informed the Plaintiff she was going to sell part of the property as the Plaintiff had not paid for it. There are Sale Agreements where the Plaintiff and 1st Defendant signed showing the agreed purchase price, sizes of land and bank statements indicating settlement of the purchase price.

The application is supported by the affidavit of CAROLINE SABIRI MANYANGE where she deposes that the subject in dispute is LR KAJIADO/ OLCHORO - ONYORE / 13165 that has been subdivided into parcel nos. 20503 and 20504 which the 1st Defendant has declined to sign transfer forms. She avers that LR KAJIADO/ OLCHORO - ONYORE / 13166 has already been transferred in her name as agreed. She states that on 30th April, 2012 together with the 1st Defendant, they entered into an agreement for the sale of 0.76 hectares part of LR KAJIADO/OLCHORO - ONYORE/13165 for Kshs. 1,400,000/=. She paid Kshs. 100,000 in cash and Kshs. 300,000 via bank deposit to the 1st Defendant's Kenya Commercial Bank Account Number 1126431796. She avers that on 27th June, 2012 she paid Kshs. 400,000, on 12th July, 2012, she paid Kshs. 500,000 and on 3rd September, 2013 she paid Kshs. 500,000. She said she entered into several Sale Agreements with the 1st Defendant in respect of purchase of various sizes of land from LR No. KAJIADO/OLCHORO - ONYORE/13165 and continue to make payments periodically. On 3rd October, 2013 she paid Kshs. 1 million, on 2nd November, 2013 she paid Kshs. 1 million, on 20th December, 2013 she paid Kshs. 200,000, on 1st February, 2014 she paid Kshs. 200,000 on 4th April, 2014 she paid Kshs. 100,000, on 21st May, 2014 she paid Kshs., 1.2 million and on 19th July, 2014 she paid Kshs. 250,000 completing the payment of the full purchase price. Further, that the 1st Defendant pestered her to make further payment and she made other payment as follows: 7th August, 2014 Kshs. 60,000 and Kshs 68,200 through mobile money; 16th September, 2014 Kshs 60,000; 29th October, 2014 Kshs 70,000; 26th January, 2015 Kshs. 100,000; 3rd March, 2015 Kshs. 100,000; and 26th

March, 2015 Kshs. 100,000. The Plaintiff further avers that after reconciliation and realizing she had overpaid, the 1st Defendant has declined to transfer the property to her nor refund the overpayment.

The 1st Defendant opposed the application and filed a replying affidavit where she deposed that she is the proprietor of Land Parcel Number LR KAJIADO/ OLCHORO - ONYORE / 20503 measuring 2.6 acres and that she met the Plaintiff in 2012 when she was owner of LR KAJIADO/ OLCHORO - ONYORE / 12165. She states that she agreed to sell the land to the Plaintiff who took her to her Lawyer's office Daniel Nyakundi advocate and made her sign some documents but they declined to allow her to bring her daughter. She was given the signed agreement and Kshs. 10,000 as transport. She avers that she shared the said agreement with her people who upon scrutiny pointed out the glaring mistakes and omissions thereon. She states that she complained to the Plaintiff, her agent Daniel Kamuasi Ole Nchorore and the Lawyer David Nyakundi and the advocate he drafted a fresh sale agreement and discarded the one dated 11th April, 2012. She states that the purchaser's advocate advised her not to get another lawyer as it would be costly and he would act for both of them. Further that it is after signing the sale agreement dated the 30th April, 2012 that the purchaser deposited into her account Kshs. 300,000 less Kshs. 100,000 as per the Sale Agreement. She further deposes that it was pursuant to the Sale Agreement dated 30th April, 2012 that the land was subdivided into two titles creating KAJIADO/OLCHORO - ONYORE/13165 measuring 4.6 acres in the names of NJERI ENE YAILE (1st Defendant) and KAJIADO/OLCHORO - ONYORE/13166 measuring 2 acres in the name of CAROLINE SABIRI MANYANGE (Plaintiff). She further avers that it was only after the Plaintiff paid the purchase price in full in the earlier sale of 30th April, 2012 that she approached her (1st Defendant) to sell to her (Plaintiff) one acre of land from title number KAJIADO/OLCHORO - ONYORE/13165 at Kshs. 1.2 million. She states that the transaction culminated in the subdivision of KAJIADO/OLCHORO - ONYORE/13165 creating KAJIADO/OLCHORO - ONYORE/20503 measuring 3.6 acres in the name of Njeri Ene Yaile (1st Defendant) and KAJIADO/OLCHORO - ONYORE/20504 measuring one acre in the name of Caroline Sabiri Manyange (Plaintiff). She emphasized that this marked the end of her transactions with the Plaintiff and she never sold land to any other person. She insists the agreement dated 3rd October, 2013 is a forgery as at that time title number KAJIADO/OLCHORO - ONYORE/13165 was already surrendered in the Kajiado land registry awaiting titles 20503 and 20504 respectively which came out on 10th October, 2013 . She further avers that the Plaintiff has bought from her a total of 3 acres of land but moved in and hived off the remaining land title number KAJIADO/OLCHORO - ONYORE/20503 fenced it off and is threatening to throw her out. She denied showing people land with an intention of selling to them and that the Plaintiff put excess money in her account. She reiterates that all the dealings, agreements and payments pertaining to the suit property were all in writing and no separate agreements and or dealings were done outside of the said agreements.

Both parties filed their respective written submissions which I have considered.

Issues and Determination

The only issue for determination at this juncture is whether the Plaintiff is entitled to the injunctive orders sought.

The principles of granting interlocutory injunction were settled in the case of **Giella vs. Cassman Brown & Co. Ltd (1973) E.A 358** where the court held inter alia that for an injunctive order to be granted the Applicant has to demonstrate it has prima facie case with a probability of success, and it stands to suffer irreparable loss or injury which cannot adequately be compensated in damages. If the court is in doubt, it should decide the application on a balance of convenience. In line with the said principles, I wish to interrogate the evidence presented as to whether the Plaintiff has established a prima facie case with probability of success.

In the first instance as to whether the Plaintiff has a prima facie case with probability of success, the Court notes that the Plaintiff indeed paid the purchase price for part of the suit land , a fact not denied by the 1st Defendant. The Plaintiff stated that she was already registered as owner of land parcel number LR KAJIADO/ OLCHORO - ONYORE / 13166 but the subject in dispute is LR KAJIADO/ OLCHORO - ONYORE / 13165 which has been subdivided into parcel nos. 20503 and 20504 which the 1st Defendant

has declined to sign transfer forms in her favour. The 1st Defendant on the hand avers that there is already a subdivision which created KAJIADO/OLCHORO - ONYORE/20503 measuring 3.6 acres in the name of Njeri Ene Yaile (1st Defendant) and KAJIADO/OLCHORO - ONYORE/20504 measuring one acre in the name of Caroline Sabiri Manyange (Plaintiff). No party however has produced evidentiary proof of these two latter titles. From the submissions herein, it is clear the Plaintiff has established a prima facie case with a probability of success.

On the second issue as to whether the Plaintiff stands to suffer irreparable loss or injury which cannot adequately be compensated in damages. The Court notes that the Plaintiff had paid all the purchase price as had been agreed upon and is already in occupation on part of the suit land. The Plaintiff claims to even have overpaid and was seeking a refund from the 1st Defendant which is yet to receive. If indeed the 1st Defendant has declined the transfer forms in the Plaintiff's favour after receiving the full purchase price for the suit land, the Court finds that the Plaintiff will indeed suffer irreparable loss which cannot be adequately compensated in damages.

On the question of balance of convenience, from the evidence presented by the parties, I am not in doubt that if the title to the property is not preserved, it may be wasted away. I will allow the Plaintiff's application dated 15th August, 2016 in the following terms:

'An inhibition order be and is hereby registered by the Land Registrar Kajiado as against Land Parcel Number LR KAJIADO/ OLCHORO - ONYORE / 13165 which has been subdivided into parcel nos. 20503 and 20504 of any dealings including disposing of, transferring , leasing or charging pending the hearing and determination of the suit.'

The costs will be in the cause.

Dated signed and delivered in open court at Kajiado this 25th day of September, 2017.

CHRISTINE OCHIENG

JUDGE

REPRESENTATION.

Manyange for plaintiff

Adare holding brief for Amendi for defendant

Court Assistant Mpoye