



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND CASE NO 5 OF 2017

DAVID NKONGE IMBUURU.....PLAINTIFF /APPLICANT

VERSUS

SILAS KABURU.....DEFENDANT/RESPONDENT

RULING

The Notice of Motion dated 6th January, 2017 seeks the following orders:-

(1) Spent.

(2) That pending the hearing of this application inter parties this Honourable Court be pleased to issue an order of injunction restraining, the Defendant/Respondent either by himself, his servants, agents or/and members of his family from alienating, selling, entering , or in any way interfering with the Plaintiff's use and occupation of Land Reference No. MBEU 1/326.

(3) That pending the hearing and determination of this suit this Honourable Court be pleased to issue an order of injunction restraining, the defendant/respondent either by himself, his servants, agents or /and members of his family from alienating, selling, entering, or in any way interfering with the plaintiff's use and occupation of Land Reference No. MBEU 1/326.

(4) That this Honourable Court be pleased to make an order of inhibition to inhibit any dealings with Land Reference No. MBEU 1/326 until this suit is heard and determined.

(5) The costs of this application be provided for.

The application is based on the following grounds:-

(a) That the Plaintiff/Applicant has been the registered owner of L.R. NO. MBEU 1 /326 in the Adjudication process was done.

(b) That the Defendant corruptly changed the Registration to his name.

(c) That the Plaintiff/Applicant has been and is in possession of L.R NO. MBEU 1/326 and has fully and extensively developed the same for over 30 years.

(d) That the Defendant/Respondent after his fraud and forgery want to forcibly evict the Plaintiff/Applicant and his family and this Court's intervention is necessary to stop impunity and hooliganism.

The Applicant, DAVID NKONGE IMBUURU has filed a supporting affidavit and a further affidavit in support of his application where he states that in 1983, he bought 4 acres from the Defendant/Respondent and they signed an Agreement. Applicant then occupied Land with his family and started developments

Applicant avers that the Land was later demarcated and Adjudicated in 1988, and was marked as MBEU 1/326. Defendant/Respondent then officially transferred the whole land to the applicant.

Further, applicant states that Objection proceedings were filed by one PHARES NJERU in which the Defendant/Respondent and applicant were ordered to have 2/3 share of the Land. The land was then surveyed and put in the sketch plan of adjudication section. It was then registered in Plaintiff's name and there were no further disputes as Applicant waited for the issuance of Title Deed.

Applicant states that the year 2015 and 2016 is when Defendant/Respondent started to interfere with the suit land and he even sent word to applicant telling him to go back to where he had come from. In 2015, applicant says he was summoned by DLASO and was informed that the register records in Nairobi indicated that the suit land was registered in the name of defendant yet the records at the lands office in Uuru indicates that he (Applicant), is the registered owner of the land.

The Respondent has also filed a Replying Affidavit where he states that he acquired the suit land way back in 1969, and he built a house for his sister who lived there since then and he even helped her to possess her land parcel No. 354 Mbeu 1 in the same village.

Further, defendant states that in 1986, his land No. 256 Mbeu 1 had a dispute with one Phares Njeru. Where David Nkonge ,(the applicant) and his mother were both Defendant's witnesses in that case and none of them raised any claim of ownership.

Defendant states that the houses in the suit land are for his workers and that applicant is not in occupation of the suit property.

On 8.3.17, the Court gave directions for the application to be canvassed by all the arguments raised herein. Plaintiff's claim is that he bought the suitland from the Defendant. The suit land was surveyed and recorded in the Adjudications Register as that of the Plaintiffs. He was to discover later that the land is in the name of the Defendant. He says he is in the possession of the land. He also avers that the change of the records of the adjudication register is through fraud and forgery. Applicant has submitted that the Court has the discretion to grant the injunction citing the Civil Case No 566 of 2013 and 450 of 2012 at Milimani Commercial Court and H.C.C.C. No 161 of 2011.

The Respondent avers that the two litigants are relatives whereby Plaintiff is a nephew of defendant. He says that he has never sold his land to Plaintiff. He claims that the documents in possession of Plaintiff are forgeries.

In Jimba Credit Corporation [1988] KLR the Court held that;

“The correct approach in dealing with an application for an interlocutory injunction is not to decide the issue of fact, but rather to weigh up the relevant strength of each side's propositions. The lower court judge had gone beyond his proper duties and made final findings of fact on disputed affidavits.”

In the present case, the applicant's rights and interests in the suit land cannot be ascertained at this stage. Apparently, applicant's interests in the suit land are not registered in the adjudication record. Applicant is alluding to matters of fraud and forgery. These are not issues which the Court can deliberate on at the interlocutory stage, as they invite arguments.

I also note that in Paragraph 7 of the Plaint, Plaintiff states that the records have been submitted to the land Registrar as the Adjudication Process was completed. If that be the case, how then will the Register in respect of land reference No. Mbeu 1/328 be rectified?. Is this not a case where evidence is required in

order to determine the rights and interests of the parties?. I find that the issues raised here in ought to be canvassed during the trial of the case.

As at now, I find that the application is not meritorious, the same is dismissed with costs to Respondent. Any interim orders issued herein including the order of inhibition are is hereby vacated.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT MERU THIS 20TH DAY OF SEPTEMBER, 2017 IN THE PRESENCE OF: -

C:A Janet

Ashamba h/b for Rimita for Plaintiff/Applicant

Defendant Present

HON. L. N. MBUGUA

ELC JUDGE