



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC NO.845 OF 2016

JACKSON GATHUMBI MUTUOTA..... PLAINTIFF

=VERSUS=

MWIKI COMPANY LIMITED.....1ST DEFENDANT

PRISCA WAKIURU KAMAU.....2ND DEFENDANT

RULING

1. The Plaintiff/Applicant brought a Notice of Motion dated 20th July 2016, against the Respondents seeking the following reliefs:-

a) Spent

b) Spent

c) That the defendants, their agents, servants and any person claiming any right under them be restrained from interfering and/or transferring to a third party all that piece of land known as Land Reference Number 434 comprised in the certificate No. 1441(suitland)pending the hearing and determination of this suit.

d) That the cost of the application be borne by the defendants.

2. The applicant bought the suitland from one Jemimah Wambui Kinyanjui on 19/9/1997. The vendor was the beneficial owner of the suitland according to the records held by the first respondent which was a land buying company. The applicant duly paid transfer fees to the first Respondent and had the records changed into his name. He was duly issued with a certificate of ownership by the first Respondent.

3. In or around 12th April 2016, the applicant went to the suit land and found that someone had trespassed on to the suitland and put up buildings on the same. He made enquiries and found out that the buildings had been put up by the second Respondent. He went to the offices of the first Respondent where he was advised to report the matter to the police. Further investigations revealed that one Michael Njuguna had acquired the land purportedly from him and that he is the one who had transferred it to the second Respondent.

4. The applicant looked for the said Michael Njuguna who admitted that he had purchased the suitland from a fraudster who was masquerading as the applicant and that he had already sold the same to the

second Respondent. The applicant tried to sort out the issue with the first Respondent which declined to sort out the issue prompting him to bring this application.

5. Though the first Respondent filed a defence to the applicant's claim, it did not file any response to the applicant's application. The second Respondent opposed the applicant's application through a replying affidavit sworn on 16th January 2017 in which she contends that she bought the suitland from Michael Njuguna Muratha on 2nd March 2012. That she purchased the suitland from the said Michael Njuguna Muratha after carrying out due diligence from the first respondent's offices which revealed that the owner of the suitland was Michael Njuguna Muratha who had purchased it from the applicant. The first defendant duly transferred the suit land to her name and issued her with a share certificate. She has since put up residential houses on it. The second Respondent contends that the alleged meetings between the applicant and the first Respondent as well as Michael Njuguna Muratha is a ploy to take away the suitland from her.

6. The parties herein agreed to dispose of the application by way of written submissions. The applicant filed her submissions on 25th April 2017. The second respondent filed her submissions on 11th May 2017. The first Respondent who had been granted time to file its submissions did not file any. I have considered the applicant's application as well as the opposition to the same by the second respondent. I have also considered the filed submissions. This being an application for injunction, I have to determine whether the applicant has met the threshold set out in the **Giella Vs Cassman Brown Co.Ltd** case.

7. According to the ***Giella Case (supra)***, an applicant has to demonstrate that he has a prima facie case with probability of success or that the injury he is likely to suffer will not be compensated in damages. If the court is in doubt, it will decide the application on a balance of convenience. In the instant case, the applicant has demonstrated that he purchased the suitland from one Jemimah Wambui Kinyanjui on 19/9/1997. Records were duly changed and he was issued with a share certificate in his own name. He has never sold the suitland to any other person.

8. When he discovered that the second Respondent had trespassed on to the suitland and put up buildings on it, he did investigations which investigations revealed that one Michael Njuguna Muratha was the one who sold the suitland to the second Respondent. This Michael Njuguna Muratha claimed that he had bought the suitland from a fraudster who had purported to be the applicant. Despite the applicant bringing these facts to the attention of the first respondent, the first respondent appeared not to be keen on following up the matter.

9. In the defence filed by the first defendant, the first defendant claims that there were some forgeries. It is not clear who did the forgeries. What is clear is that the forgeries were not attributed to the Applicant. The second Respondent has not provided documents to show how the transfer from Michael Njuguna to her name was done. Considering the materials before me, I find that he has a prima facie case with probability of success.

10. Land is a unique asset in that no two parcels may be the same. It cannot therefore be argued that the applicant may be adequately compensated in damages should he succeed. I find that this is a proper case where an injunction should issue to preserve the suitland. I therefore allow the applicant's application in terms of prayers (c) and (d).

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **19th** day of **September, 2017**.

E.O.OBAGA

JUDGE

In the presence of :

M/s Githaiga for applicant

Court Assistant: Hilda

E.O.OBAGA

JUDGE