



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 371 OF 2016

ELIUD KARIMI KIAMBOPLAINTIFF

VERSUS

DAVID MWANGI KAGWEMA1ST DEFENDANT

MWANGI WANJIMA JOHN2ND DEFENDANT

RULING

(Application for injunction; principles to be applied; plaintiff having purchased the suit land and being registered as proprietor; defendants interfering with his possession; no reply filed by the defendants to give reasons for the interference; prima facie case established; application for injunction allowed)

1. This suit was commenced on 8 September 2017 by way of plaint. In his suit, the plaintiff has averred that he is the registered proprietor of the land parcel Kiambogo/Kiambogo Block 2/18739 which he purchased from the 1st defendant through a sale agreement entered into on 15 November 2010. He has stated that on 21 August 2013, the 1st defendant executed the relevant transfer forms, which were lodged, and the plaintiff issued with title on 23 August 2013. The transaction is said to have been done through the offices of M/s Cherutich & Company Advocates. Towards the end of 2013, he received information that the 1st defendant wished to sell the same property to another person, and he placed a restriction against the title on 16 December 2013. On 10 November 2015, the plaintiff received a demand letter from the law firm of M/s Cherutich & Company Advocates, demanding that he gives vacant possession of the property to the 2nd defendant. This took him aback since it is the same law firm which undertook his transaction. He avers that he tried to conduct a search of the property in vain as he was told to get a copy of the title deed of the registered owner. He thus believes that the land was transferred to the 2nd defendant irregularly. In the suit, the plaintiff has sought for orders of permanent injunction against the defendants from any dealings over the suit land and an order cancelling the registration of the 2nd defendant as proprietor alongside costs.

2. Together with the suit, the plaintiff filed an application for an interlocutory injunction seeking to have the defendants restrained from any dealings over the suit land or any interference with its possession until this case is heard and determined. It is that application which is the subject of this ruling. Despite being served with summons and with the application, the defendants have not entered appearance to the suit, and neither have they responded to the application. The only material before me is therefore only that tendered by the plaintiff.

3. I have considered the application. The plaintiff in his supporting affidavit has displayed his sale agreement with the 1st defendant and has also exhibited a copy of the title deed that he has. The same shows that it was issued to the plaintiff on 23 August 2013. The plaintiff has further averred that he has been in possession of the suit land through a caretaker, a Mr. Peter Shitemi Alikula. However on 15 August 2017, he was informed by his caretaker that the 2nd defendant has invaded the land and deposited building stones, and in the process, causing damage to his perimeter fence and a growing maize crop. A further supporting affidavit sworn by Mr. Alikula affirms that a lorry did indeed deposit building materials under the instructions of the 2nd defendant.

4. The plaintiff has exhibited a title deed to the suit property and prima facie he is therefore the owner of the suit land. The defendants have not displayed anything to reveal their interest in the suit land. I am therefore persuaded that the plaintiff has demonstrated a prima facie case with a probability of success. If an injunction is not issued, he stands to suffer irreparable loss as the defendants may deal with the property and/or proceed to evict him.

5. Given the above, I do hereby issue an order of interlocutory injunction stopping the defendants and/or their servants/agents from entering into any sale, charge, lease or any other disposition over the suit land. I also issue an interlocutory injunction stopping the defendants and/or their servants/agents from depositing any materials on the suit land, entering, being upon, or in any other way interfering with the plaintiff's quiet possession of the same. In addition, I issue an order of inhibition, restricting the registration of any disposition in the register of the land parcel Kiambogo/Kiambogo Block 2/18739 until the conclusion of this case.

6. On costs, the same shall be to the plaintiff.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 24TH day of October 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Mr. Okeke for the plaintiff/applicant

No appearance for the respondents

Court Assistant: Carlton Toroitich

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU