



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

E.L.C. CASE NO. 105 OF 2017

SOSPETER KITHUMBI MURANGIRI (*Suing on his own behalf and on behalf of Ikandu Clan*).....**PLAINTIFF**

VERSUS

ALBERT NJERU.....**1ST DEFENDANT**
MWANIKI MUGO MACHARIA.....**2ND DEFENDANT**
MWANIKI MBUGI.....**3RD DEFENDANT**
ANTONY NYAGA MACHARIA.....**4TH DEFENDANT**
MUGO ITHAGA.....**5TH DEFENDANT**
MUTHEE MACHARIA.....**6TH DEFENDANT**
CHARLES NGARI.....**7TH DEFENDANT**
MURIITHI MUGO MACHARIA.....**8TH DEFENDANT**
JOSPHAT NTHIGA MUKABI.....**9TH DEFENDANT**

RULING

1. By a plaint dated 31st May 2017 and filed on 5th June 2017 the Plaintiff sought the following orders against the defendants;

a. An order for injunction directed to the Defendants, their agents, servants, employees, clansmen or anybody acting under them from interfering with the Plaintiff's occupation, possession, utilization and quiet enjoyment of land parcel numbers Mbeere/Mbita/2805, 2519 and 2579.

b. Costs of the suit.

c. Any other or better relief the honourable court may deem fit to grant.

2. Simultaneously with the filing of the suit, the Plaintiff filed an application for interlocutory reliefs under **Order 40 of the Civil Procedure Rules** seeking the following orders;

- a. *That this honourable court be pleased to certify this application as extremely urgent and the same be heard ex-parte in the first instance.*
- b. *That this honourable court be pleased to issue a temporary injunction restraining the respondents, their agents, servants, employees or anybody acting under them from invading and interfering with the applicant's occupation, utilization and possession of land parcel number Mbeere/Mbita/2805, 2519 and 2579 pending the hearing and determination of this application.*
- c. *That this honourable court be pleased to issue an order of injunction restraining the Respondents, their agents, servants, employees or anybody under them from interfering with the Applicant's occupation, utilization and possession of land parcels No. Mbeere/Mbita/2805, 2519 and 2579 pending the hearing and determination of this suit or until further court orders.*
- d. *That the OCS Kiritiri and County Commander, Embu to ensure compliance.*
- e. *That the costs of this application be provided for.*

3. It was pleaded in the plaint that the Plaintiff was suing as a representative of the Ikandu clan which was the legitimate owner of *Title Nos. Mbeere/Mbita/2085, 2519 and 2579*. It was the Plaintiff's case that the process of determining ownership through the land adjudication process had been concluded and that he was in the process of demarcating the land for the purpose of allocating it to his clan members when the Defendants interfered with the process.

4. The said application was supported by the affidavit of the Plaintiff sworn on 31st May 2017 in which it was stated that there were no pending cases over the suit properties. The Plaintiff attached, as opposed to exhibiting, copies of letters which indicated that either appeals to the Minister under **section 29 of the Land Adjudication Act** had been decided in favour of Ikunda clan or that they had been withdrawn. It was shown that when the Plaintiff embarked on demarcating the suit properties, the Defendants organized an armed mob which forcibly prevented him from undertaking the exercise. It was further sworn that the beacons which had already been fixed were uprooted.

5. The Defendant filed a replying affidavit sworn on 27th September 2017 by Josephat Nthiga Mukavi. They stated that the suit properties had been subjected to several cases which culminated in some appeals to the Minister. The dispute mainly involved the Ikandi and Gekara clans even though Ugweru clan was involved with respect to parcel No. 2519. The Defendants conceded that two of the appeals they had filed were withdrawn by their clan representative whom they accused of acting unilaterally and maliciously. They had unsuccessfully sought to have the withdrawn appeals reinstated.

6. The Defendants in their affidavit stated that they were in occupation of the suit properties and asserted that the Plaintiff was part of the conspiracy to defraud Gekara clan of the suit properties which they considered to be their land. It was also their case that since they were already in occupation of the suit properties if the orders sought are granted, then they may be evicted prematurely.

7. The court has considered the material on record and the submissions of the parties herein. It is evident that there were some disputes between the Ikandi and Gekara clans over ownership of the suit properties during the land adjudication process. Those disputes were apparently resolved in accordance with the procedures laid down in the Land Adjudication Act. Some of the cases went all the way to the Minister whose decision is final under **section 29 of the Land Adjudication Act**. It is also apparent that at least two of the appeals were decided in favour of the Ikandi clan whereas two were withdrawn by the Gekara clan. Without getting into the merits of the suit, the court is satisfied that the Plaintiff has made out a *prima facie* case with a probability of success at the trial hereof and has therefore satisfied the requirements for the grant of an order of injunction as set out in the case of **Giella Vs Cassman Brown & Co Ltd [1973] EA 358.**

8. The second principle relates to the adequacy or otherwise of monetary damages. An injunction will not normally be granted unless the applicant might otherwise suffer irreparable loss or damage if the order is

denied. It is evident that the Plaintiff intends to subdivide and allocate the suit properties to various members of the Ikunda clan who may be entitled to a share thereof in accordance with the adjudication register. If the process of demarcation is delayed for a considerable period of time, then it may be difficult to quantify the kind of losses which the various members of Ikunda clan may suffer. In my view, if such loss is difficult to quantify then it may not be possible to offer adequate monetary compensation.

9. In my opinion, the Plaintiff has satisfied the first two requirements for the grant of an interlocutory injunction and I need not consider the third one on balance of convenience. The Defendants claimed in their replying affidavit that they are already in occupation of the suit properties and as such an injunction should not issue. The court has noted that apart from that bare statement, the Defendants have not tendered any evidence to demonstrate occupation. They did not indicate what activities or developments, if any, they are undertaking on the suit properties. The court is of the view that the claim of occupation has not been demonstrated.

10. The upshot of the foregoing is that the court finds merit in the Plaintiff's notice of motion dated 31st May 2017 and the same is hereby allowed in terms of prayer No. 3 and No. 4 thereof. Costs of the application shall be in the cause.

11. Orders accordingly.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **29th day** of **NOVEMBER, 2017**.

In the presence of Mr Muriuki holding brief for Mr Ngari for the Plaintiff and in the absence of the Defendants.

Court clerk Njue/Leadys.

Y.M. ANGIMA

JUDGE

29.11.17