



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC CASE NO. 297 OF 2017

(Formerly Machakos HCCC No. 130 of 2012)

PHILIP MUTISO MAKAU.....PLAINTIFF

VERSUS

KIANDA FOUNDATION EDUCATIONAL TRUST....1ST DEFENDANT

THE CHIEF LAND REGISTRAR.....2ND DEFENDANT

THE LAND REGISTRAR KAJIADO.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

RULING

The application before Court is a Notice of Motion dated 27th July, 2017 brought pursuant to Section 13 of the Environment and Land Court Act, Sections 68, 69 and 70 of the Land Registration Act and all the other enabling provisions of the Law.

The application is based on the following grounds which in summary is that on 19th June, 2014 the Machakos High Court issued conservatory orders where the 1st Defendant was restrained from embarking on any activities that would alter the physical status of the suit land. Sometime in January 2017, the Plaintiff noticed a strange green container on the suit land with an unknown man sighted periodically going in and out of the said container who informed the Plaintiff that he had been hired to guard the property but declined to divulge the name of the person who hired him. Plaintiff's advocates sought intervention from the 1st Defendant's advocates but in vain. Plaintiff further sought intervention of the 3rd Defendant to inform him of the status of the suit land but the said 3rd Defendant has informed Plaintiff to surrender the title deed first before issuing a certificate of official search. The 3rd Defendant is doing a disservice to the cause of justice by concealing the true registration status of the suit land. Sometime in June 2017, some beacons were placed on the suit land and a fence is being erected thereon. It is clear a third party has acquired the suit land or is in the process of acquiring it.

The application is supported by the affidavit of PHILIP MUTISO MAKAU the Plaintiff herein where he deposes that the suit commenced at the High Court in Machakos where he sued the 1st Defendant for obtaining an improper registration over land parcel number KAJIADO/KAPUTIEI -CENTRAL/496 (suit land). He avers that he obtained a temporary injunction on 19th June, 2014 restraining the 1st Defendant from moving into the suit land and conducting developments thereon pending the outcome of the suit. He claims despite seeking intervention from the 1st Defendant's advocates and the 3rd Defendant, all has been in vain.

The application is opposed by the 1st Defendant who filed a replying affidavit sworn by DOROTHY KHAMISI who is one of the trustees where she deposes that the 1st Defendant is the sole proprietor of the suit land and the Plaintiff has never occupied or had possession of the land. She reiterates that the Plaintiff is already enjoying interlocutory orders in this matter and has not provided proof that the 1st Defendant in conjunction with others is interfering with it. She contends the Plaintiff's application is based on hearsay, rumours, slanderous and a ploy to delay the hearing and determination of the suit considering pre trial directions had already been undertaken and hearing scheduled for 20th September, 2017.

Both the Plaintiff and 1st Defendant submitted on the application on 20th September, 2017 which I have considered. The 2nd, 3rd and 4th Defendant however did not file any reply to oppose the said application.

Analysis and Determination

Upon perusal of the application together with the supporting & replying affidavits and submissions herein, at this juncture the only issue for

determination is whether an inhibition order should be registered against the title to the suit land pending the hearing and determination of the main suit.

It is the Plaintiff's contention that despite injunctive orders issued on 19th June, 2014 restraining the 1st Defendant from moving into the suit land and conducting developments thereon pending the outcome of the suit, he has seen developments thereon. Further that certain beacons have been placed thereon and a fence erected. He annexed pictures of the alleged green container in his supporting affidavit. He claims that the 3rd Defendant declined to grant him a Certificate of official search and indicated he surrenders the title deed first. Further that efforts to have the matter resolved between his advocates has not borne fruit as the 1st Defendant persists in interfering with the suit land. He is apprehensive that unless an inhibition order is registered against the title, it might be sold to third parties while the suit is pending.

The 1st Defendant states that it is the sole absolute proprietor of the suit land and the Plaintiff is relying rumours to delay the hearing of this suit. She states that the Plaintiff is already enjoying injunctive orders and the current application should be dismissed with costs.

Section 68 of the Land Registration Act provides that: '**(1)The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.(2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register (3) An inhibition shall not bind or affect the land, lease or charge until it has been registered.**

Section 70 further provides that: The registration of an inhibition shall not be cancelled except in the following cases - (a) on the expiration of the time stated in the inhibition;(b) on proof to the satisfaction of the Registrar of the occurrence of an event stated in the inhibition; (c) on the land, lease or charge being sold by a charge, unless such sale is itself inhibited; or (d) by a consequent order of the court.'

I find that the provisions of Section 68 and 70 are explicit, and were put in place to protect the validity of a title until an occurrence of an event. In the current scenario, in so far as there are already injunctive orders in place, to restrain the 1st Defendant from embarking on activities to alter the suit land there was none to protect the title. Since two parties are staking claim to the suit land and as an independent arbiter, it is the duty of the Court to protect each party and grant them a chance to present their case before making a final determination. Further I note the 3rd Defendant who is the custodian of all the records relating to the suit land has not been cooperative to assist the Plaintiff obtain correct status of the title to the suit land. In the circumstances I find that the 1st Defendant will not suffer any prejudice if the inhibition order is registered against the suit land.

The upshot of the matter is that I will allow the Notice of Motion dated 27th July, 2017 as it is merited.

The costs will be in the cause.

Dated, signed and delivered in open court at Kajiado this 14th day of November, 2017.

CHRISTINE OCHIENG

JUDGE