



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C NO. 471 OF 2017

BASILEO MIRITI MWIANDI

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PLAINTIFF/APPLICANT

VS

THE HONOURABLE ATTORNEY

GENERAL (For and on behalf of

The District Land Registrar,

Murang'a County)

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DEFENDANT/RESPONDENT

RULING

1. The Applicant filed a chamber summons on 4.10.17 under section 1, 1A,1B & 3A of Civil Procedure Act and all enabling provisions seeking Orders as follows; -

a) Spent.

b) The District Land Registrar, Murang'a County be directed to cancel an entry in the Parcel Register for the parcel of land known as Loc.4/Muruka/266 alleging suspected fraud.

c) The District Land Registrar, Murang'a County be thereafter directed to issue a current official search of the parcel of land aforesaid upon application and payment of the requisite fees.

d) Costs be in the cause.

2. The application is supported by the Affidavit of the Applicant **Basileo Mariti Mwiandi** and the grounds that he has been ailing since 2015 and had intended to sell his land to offset medical bills abroad. He expressed frustrations in getting a current official search of the suit property to attest to his ownership for purposes of marketing the land to prospective buyers.

3. Further he states that on perusal of the Land Register at the Murang'a Lands Registry he realized that there is an undated and unsigned entry alleging suspected fraud. He deposed that there is no justifiable reason for the entry and no details of the complainant are provided. He besieged this Court to Order that the entry be cancelled by the Respondent.

4. The Applicant has attached a certified copy of the title deed for Loc.3/Muruka/266 and a certificate of official search dated 22.9.17.

5. When the matter came for interpartes hearing on 24.10.17 the Respondents were absent despite service

having been effected on them as evidenced by the Affidavit of service dated 23.10.17. The Learned Counsel for the Applicant proceeded to argue the application and relied on the Affidavit sworn by the said Applicant and sought prayers 2, 3 & 4 in the application.

6. I have reviewed the application, the Supporting Affidavits and the annexures and note that though the application is undefended, the same is seeking final Orders at interlocutory stage. He is seeking mandatory Orders with the likelihood of determining the matter to its conclusion without going into its merits. The prayers in the application are similar to the prayers in the plaint and it is my view that the same cannot be granted at the interlocutory stage.

7. In the case of **Nandan Pictures Ltd. Vs. Art Pictures Ltd & others, Air 1956, Cal 428**, Chakravartti, CJ. of the High Court of Calcutta set out, in the following passage, the rather limited scope in which a mandatory injunction is available at the interlocutory stage:

“At the same time, I may point out what the accepted principles have been and what has been, according to the reported cases, the practice of the Courts. It would appear that if a mandatory injunction is granted at all on an interlocutory application, it is granted only to restore the status quo and not granted to establish a new state of things, differing from the state, which existed at the date when the suit was instituted. The one case in which a mandatory injunction is issued on an interlocutory application is where, with notice of the institution of the plaintiff's suit and the prayer made in it for an injunction to restrain the doing of a certain act, the Defendant does that act and thereby alters the factual basis upon which the plaintiff claimed his relief. An injunction issues in such a case in Order that the Defendant cannot take advantage of his own act and defeat the suit by saying that the old cause of action no longer survived and a new cause of action for a new type of suit had arisen. When such is found to be the position, the Court grants a mandatory injunction even on an interlocutory application, directing the Defendant to undo what he has done with notice of the plaintiff's suit and the claim therein and thereby compels him to restore the position which existed at the date of the suit.”

8. In **Shepherd Homes Limited Vs Sandahm Homes Limited V. Sandahm [1971] 1 CH. 34**, Megarry, J. stated:

“it is plain that in most circumstances a mandatory injunction is likely, other things being equal, to be more drastic in its effects than a prohibitory injunction. At the trial of the action, the Court will, of course grant such injunctions as the justice of the case requires; but at the interlocutory stage, when the final result of the case cannot be known and the Court has to do the best it can, I think the case has to be unusually strong and clear before a mandatory injunction will be granted, even if it is sought in Order to enforce a contractual obligation

No reasons have been adduced in this case to warrant granting of a mandatory injunction.

9. Further I have examined the copy of certificate of search annexed to the application and note the following entries;

“ 19/11/85 - Mungai Muniu on behalf of and as trustees for
Benson Nyoike Muniu, Thuo Muniu, Joseph Keige Muniu.
20/11/85 - Land certificate issued.
17/11/86 - Caution in favour of Peninah Muthoni Mutura
of Box 255 Kiambu claiming beneficial Interest.”

10. From the above it is plain clear that there may be third parties whose interests have been noted on the said Title and their rights will be affected if the Court were to grant Orders which by and large are final in

nature without affording the Defendant the opportunity to explain the entries on the title. Furthermore, the Applicant has pleaded fraud in his application which must be proved on trial. Let the matter go to full hearing so that the merits can be canvassed thereon.

11. I have also noted the absence of any entry in the duly signed official search for Loc.4/Muruka/266 in the name of the Applicant. The title however reads the Applicant as the registered owner. Everything else is similar on the title and the search except the entries pointed out above.

12. For the reasons given above the application partially succeeds to the extent that the District Land Registrar Murang'a be and is hereby Ordered to issue a current official search of Loc.4/Muruka/266 to the Applicant upon application and payment of the requisite fees.

13. The costs shall be in the cause.

DATED, DELIVERED AND SIGNED THIS 18TH DAY OF DECEMBER, 2017.

J.G. KEMEI

JUDGE