



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 166 OF 2015

DINAH MAGETO1ST PLAINTIFF

ERIC MAGETO2ND PLAINTIFF

VERSUS

JOHN KIPLAGAT KIRUIDEFENDANT

RULING

(Application for injunction; principles to be applied; plaintiffs having purchased land from the defendant; defendant interfering with the same land; no reply filed by defendant to the application for injunction; prima facie case established; application allowed).

1. This suit was commenced by way of plaint filed on 11 June 2015. In the plaint, it is pleaded that in October 2014, the plaintiffs purchased 5 acres of the land parcel Nakuru/Kapsita/2468 from the defendant at the sum of Kshs. 1, 250,000/=. However, in the month of June 2015, the defendant entered the land claiming that it belongs to him. It is the position of the plaintiffs that the defendant's actions are acts of trespass and he needs to be stopped. In the suit, the plaintiffs have asked for orders of permanent injunction against the defendant and a declaration that they are legal owners of 5 acres of the suit land.

2. Together with the plaint, the plaintiffs filed an application for injunction which is the subject of this ruling. They have sought orders to have the defendant stopped from interfering with the 5 acres that they say they have purchased, pending hearing and determination of the suit. In the supporting affidavit, the plaintiffs have annexed two sale agreements dated 24 October 2014 and 24 November 2014 between the defendant and the 1st and 2nd plaintiffs respectively. Both sale agreements are for 2.5 acres. The applicants also annexed copies of documents showing payment of the agreed consideration.

3. No replying affidavit nor grounds of opposition had been filed by the defendant when the application came up for inter partes hearing on 7 March 2016. I declined an application for adjournment by counsel for the defendant, as in my view, the defendant had ample time, about 9 months, to file any response to the application.

4. Mr. Katithi for the applicants urged me to allow the application. Counsel for the respondent had nothing to say.

5. I have considered the application which is for injunction. The principles for the grant of an injunction are now well settled. One needs to demonstrate a prima facie case with a probability of success and also

show that he stands to suffer loss that may not be compensable by an award of damages. If in doubt, the court will decide the application on a balance of convenience.

6. I have seen the sale agreements which show that the plaintiffs have purchased 5 acres of the suit land. I have no reason to doubt them. I do not know why the defendant is now interfering with the plaintiffs' possession of what they have purchased. I am of the view that the plaintiffs have demonstrated a prima facie case with a probability of success and are entitled to the injunction. They no doubt stand to suffer loss for they will not be in use of the land if I deny them the prayers of injunction sought.

7. I therefore allow this application. I order the defendant not to interfere with the plaintiffs' occupation, possession, and use of the 5 acres of land that they have purchased from him, until the conclusion of this case.

8. The plaintiffs shall also have the costs of the application.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 22nd day of March, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of: -

No appearance on part of both counsels for plaintiffs/applicants and defendants/respondent

Court Assistant: Janet

MUNYAO SILA

JUDGE

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