



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT KERICHO**

**CIVIL SUIT NO. 65 OF 2015**

**ERIC KIMUTAI SITONIK (*suing as the Legal Representative of the estate of the late***

**ZACHAYO KIPLANGAT SITONIC alias**

**ZAKAYO KIPLANGAT SITONIC..... PLAINTIFF**

**VERSUS**

**SOT TEA GROWERS RURAL CO-OPERATIVES SAVINGS**

**& CREDIT SOCIETY LTD..... 1<sup>ST</sup> DEFENDANT**

**STERGRO(EPZ) TEA FACTORY LIMITED.....2<sup>ND</sup> DEFENDANT**

**DANIEL KIPKURUI LANGAT.....3<sup>RD</sup> DEFENDANT**

**PETER KIPKORIR LANGAT.....4<sup>TH</sup> DEFENANT**

**JOEL KIPKEMOI LANGAT.....5<sup>TH</sup> DEFENDANT**

**BOMET DISTRICT LAND REGISTRAR.....6<sup>TH</sup> DEFENDANT**

**RULING**

***(Application for injunction; plaintiff claiming that land was acquired fraudulently by defendants; land initially owned by a deceased person; one of the sons of the deceased entering into a sale agreement before succession is done; land then transferred to 1st defendant and later subdivided and transferred to other defendants; a factory now being developed on the same; prima facie case demonstrated that land may have been acquired fraudulently; orders that status quo be maintained)***

This suit was commenced by way of plaint filed on **8 December 2015**. The case of the plaintiff concerns the **land parcel Kericho/Merigi/38** now subdivided into **Kericho/Merigi/1216, 1217, 1218 and 1219**. The land parcel No. 38 was initially registered in the name of one Zachayo Kiplangat Sitonik who died on 30 June 2002. The plaintiff is the legal representative of the late Sitonik. It is pleaded that after his demise, the family of Zakayo appointed the plaintiff, and the 3<sup>rd</sup> and the 5<sup>th</sup> defendants, to be administrators of his estate. A grant of letters of administration was issued to the three on **17 September 2015**. The plaintiff has pleaded that he came to learn with shock that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants have sold the **parcel No. 38** to the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant has now subdivided the property into the **parcels No. 1216, 1217, 1218 and 1219**, and has proceeded to transfer the same to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and

5<sup>th</sup> defendants. On part of the land is being developed a tea factory. It is the position of the plaintiff that all this was done by way of fraud and misrepresentation, inter alia that there was no valid court order sanctioning the sale. It is the case of the plaintiff that the titles of the defendants are void and they should be cancelled. The plaintiff has also sought an order of permanent injunction against the defendants from the said land **parcels No. 1216, 1217, 1218, and 1219.**

Together with the suit, the plaintiff filed an application for injunction which is the subject of this ruling. In his supporting affidavit, he has inter alia averred that he is unable to comprehend how the 6<sup>th</sup> defendant, the Bomet Land Registrar, issued titles to the respondents. He has deposed that the sale of a deceased person's property cannot be effected before a grant is confirmed unless with a court order.

The application is opposed by the 1<sup>st</sup> – 5<sup>th</sup> defendants through the replying affidavit of Patrick Bett, the Manager of the 1<sup>st</sup> defendant company. He has deposed inter alia that the 1<sup>st</sup> respondent and the applicant's family entered into a sale agreement of the **parcel No. 38 on 19 September 2012** after exhausting all negotiations with the family. After the sale, the 1<sup>st</sup> respondent proceeded to invest in the property by constructing a factory. He has averred that if the applicant had any complaint, he should have filed it three years ago but not wait until the construction of the factory is complete. He has deposed that stopping the tea crushing process will not only affect the 1<sup>st</sup> respondent's members from benefiting from their investment but also affect other members of the surrounding community.

There was a supplementary affidavit filed by the applicant without leave, and on objection of Mrs. Wanderi for the 1<sup>st</sup> – 5<sup>th</sup> respondents, the same was expunged.

I took in the submissions of both Mr. Waiganjo for the applicant and Mrs. Wanderi, which I have considered.

This is an application for injunction. The principles upon which an application of this nature is determined were set out in the case of ***Giella vs Cassman Brown (1973) EA 358***. The applicant needs to demonstrate a prima facie case with a probability of success; show that he stands to suffer irreparable loss if the injunction is not granted and if in doubt, the court will decide the application on a balance of convenience.

I have seen that land **parcel No. 38** was indeed registered in the name of Zachayo Kiplangat Sitonik. He died on **30 June 2002**, and at the time of his demise, the property was still registered in his name. A succession cause in respect of his estate was filed in the year 2012 in the High Court of Kericho and a grant of letters of administration intestate issued on **17 September 2015**.

It is apparent to me, at least at this stage of the proceedings, that no one had mandate to dispose of the property of the deceased on **12 September 2012** when the sale agreement was made between one Daniel Kipkurui Langat (3rd defendant, as vendor) and Sot Tea Growers Sacco Limited (1st defendant). There had not even been issued any grant of letters of administration at this point in time let alone a confirmation of grant. There may therefore be substance in the allegations of the plaintiff that the sale to the 1<sup>st</sup> defendant was fraudulent. If that is the case, the subdivided titles risk being nullified and the land may have to revert back to the estate of the deceased for distribution. All this will of course be determined at trial, but I think that the plaintiff has, from the material presented, demonstrated a prima facie case with a probability of success.

Mrs. Wanderi argued that the factory being built on the premises is almost complete and should not be affected. That may be so, but this does not take away the fact that the plaintiff has demonstrated a prima facie case with a probability of success. If no injunctive orders are issued, there may be further wastage of the suit properties through the making of additional developments. I do not see the insistence on completing the project if there is a risk that the same may ultimately be pulled down for the reason that the land where it stands was acquired fraudulently. If the property is wasted any more than it is I think the plaintiff stands to suffer loss. In my view, an injunction ought to issue so as to maintain the current status quo.

I am of the considered view that the application for injunction is merited and I allow it. I make the following orders pending hearing and determination of the suit :-

- i. That there is hereby issued an order of inhibition, inhibiting the registration of any disposition in the registers of the **land parcels Kericho/Merigi/1216, 1217, 1218, and 1219.**
- ii. That there be no additional construction and/or development of any structures in the **land parcels Kericho/Merigi/1216, 1217, 1218, and 1219.**
- iii. That the operations of the factory should not start until the hearing and determination of this suit. The 1<sup>st</sup> defendant is however at liberty to secure the premises where the factory is situated.
- vi. The plaintiff shall have the costs of this application.

It is so ordered.

**Dated, Signed and delivered on this 8<sup>th</sup> day of April, 2016**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**PRESENT:**

Mr Waiganjo Mwangi for the Plaintiff/Applicant.

Mrs Karen Wanderi for the 1<sup>st</sup> to 5<sup>th</sup> Defendants/Respondents.

No Appearance on part of State Law Office for 6<sup>th</sup> Defendant.