



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 222 OF 2015

RUTH WANJIKU MUGOPLAINTIFF

VERSUS

MAGUTU KWAMBOKA LILIAN.....1ST DEFENDANT

CHARITY KERUBO OGERO.....2ND DEFENDANT

RULING

(Application for injunction; plaintiff being owner of the suit land; defendants having displayed a title to the same land in a separate case; defendants withdrawing the case after the plaintiff herein had applied to be enjoined as interested party; no response by defendants to this application; plaintiff having a title deed; prima facie case established; application for injunction is allowed)

1. This suit was commenced by way of plaint filed on 3 August 2015. The plaintiff has pleaded that she is the registered owner of the land parcel Mau Summit/Molo Block 3/1052 which she acquired by virtue of being a member of Dagoretti Nyakinyua Cooperative Society Limited. In April 2015, her attention was drawn to the existence of a civil suit filed at the Magistrate's Court in Molo, being *Molo SPMCC No. 107 of 2015, Magutu Kwamboka Lilian & Charity Kerubo Ogero vs Geoffrey Mbure Mukono & Evanson Njoroge Mugo*. The plaintiffs in that suit are the persons sued as defendants in this case. They have been sued because in the case in Molo, they alleged to have title to the same land that the plaintiff herein also asserts title to. The plaintiff herein has pleaded that in the Molo case, the defendants annexed a copy of a title deed to the same land owned by the plaintiff. It is the position of the plaintiff that if such title exists then it must be a fraudulent title. In this suit, the plaintiff has asked for the following orders :-

- i. *A declaration that the defendants effected transfer of title No. Mau Summit/Molo Block 3/1052 into their names and obtained a title deed to it fraudulently through misrepresentation or illegally/unprocedurally through a corrupt scheme.*
- ii. *An order directing the Nakuru Land Registrar to cancel forthwith the defendants' purported title to Mau Summit/Molo Block 3/1052 and all entries thereof and in its place revert ownership to the plaintiff.*
- iii. *A permanent injunction restraining the defendants from the suit land.*
- iv. *Costs of the suit.*

2. Together with the plaint, the plaintiff filed an application for injunction, under Order 40 of the Civil Procedure Rules, which application is the subject of this ruling. The plaintiff wants the defendants restrained from occupying the suit property or selling or dealing with the same pending hearing of this

suit.

3. Despite being served, the defendants have neither entered appearance nor replied to the subject application. The only material that I have is therefore that supplied by the plaintiff.

4. In the supporting affidavit, the plaintiff has annexed a copy of her title deed. She has also annexed the pleadings in the Molo case. I note that the defendants herein, who were plaintiffs in the Molo case, had asserted in the said case, that they have title to the suit land. The plaintiff herein upon being informed of the case in Molo, filed an application to be enjoined in the said case, but the defendants (as plaintiffs in the said case) proceeded to withdraw that case. The plaintiff is of course apprehensive that unless restrained, the defendants may adversely deal with the suit property or take possession of it.

5. I have considered the application. The plaintiff has displayed her title deed to the suit land. She has therefore demonstrated prima facie, that the suit land belongs to her. The defendants have not tendered any material to show that they have any right over the suit land. I am therefore of the view that the applicant is entitled to protection pending the hearing and determination of this case.

6. I therefore make the following orders :-

- i. *The defendants are hereby restrained from taking possession, entering, being upon, or in any other way, interfering with the plaintiff's possession of the land parcel Mau Summit/Molo Block 3/1052 (Dagoretti Nyakinyua) pending hearing and determination of this case.*
- ii. *The defendants are hereby restrained from selling, offering for sale, charging, leasing, or in any other way adversely dealing with the title to the land parcel Mau Summit/Molo Block 3/ 1052 (Dagoretti Nyakinyua) pending the hearing and determination of this case.*
- iii. *There is hereby issued an order of inhibition, inhibiting the registration of any disposition in the register of the land parcel Mau Summit/Molo Block 3/1052 (Dagoretti Nyakinyua) forwarded by any other person other than the plaintiff in this case.*

7. The plaintiff shall have the costs of this application.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 17th day of May, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of:

Mr D.W Karanja for the plaintiff

Court Assistant : Janet.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

