



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 50 OF 2016

MIKA CHEPKAITANYPLAINTIFF

VERSUS

KIMOI LOIRODEFENDANT

RULING

(Application for injunction; plaintiff having title to the suit properties; defendant interfering with the same on the argument that she is entitled to one acre having purchased it from the previous owner; plaintiff having held titles for over 20 years; defendant not having filed any claim for entitlement to one acre over this duration of time; plaintiff establishing prima facie case; application for injunction allowed)

1. This suit was commenced by way of plaint filed on 23 February 2016. Together with the plaint, the plaintiff filed an application for injunction, seeking to restrain the defendant from the suit properties, which are the land parcels Kampi Ya Moto/Kampi Ya Moto Block 1/983 and 984. It is that application which is the subject of this ruling.

2. The case of the plaintiff as disclosed in his pleadings and in his affidavit in support of the application, is that he is the registered proprietor of the two suit properties having purchased the same in the years 1994 and 1996 respectively from one William Chepkonga. He has averred that he has developed the parcels and has fenced them and resides therein with his family. However, the defendant has intermittently been interfering with the suit properties. It is claimed that she first came to the parcels of land in the year 1996 claiming to have purchased a portion of one acre. The matter was referred to the Chief but she had no documents to support her claim. In the year 2006, she trespassed into the land parcels and planted maize and beans but left when the matter was reported to the police. It is stated that the defendant has raised the matter with the National Land Commission and the Deputy Sub County Commissioner but has failed to substantiate her claims. On 19 February 2016, she hired several persons who trespassed into the land and demolished the fence and started digging a pit latrine. It is this action which prompted the plaintiff to file this suit and the application for injunction. In the suit, the plaintiff wants the defendant permanently restrained from the suit properties together with costs.

3. The defendant appointed counsel and filed a defence and counterclaim together with a reply to the application for injunction. She has contended to be the owner of one acre of the suit properties which she claims to have purchased from William Chepkonga through an agreement of sale dated 18 December 1991. She avers that she then took occupation and that the plaintiff came much later. In her counterclaim, she has pleaded that she built a farm house and planted maize between the years 1992 and 1997 when the plaintiff demolished her fence and fenced off the whole farm including her one acre portion. She has

stated that she has followed up the matter with the local administration and National Land Commission. In her affidavit, she has claimed that the plaintiff has no written agreement with William Chepkonga and that the plaintiff has been intimidating him (Chepkonga). She has contended that she applied to place a caution on the land in the year 2002 but the same is not reflected as the plaintiff collaborated with corrupt land officials. She has deposed that she intends to construct some rental houses to finance her high medical bills.

4. I invited both Mr. Gai for the plaintiff and Mr. Mongeri for the defendant to make submissions on the application but only Mr. Gai filed submissions. I have considered the same.

5. The application before me is one for injunction and the principles that guide the court in an application of this nature were set out in the case of ***Giella vs Cassman Brown (1973) EA 358***. To succeed, the applicant needs to demonstrate a prima facie case with a probability of success and also show that he stands to suffer irreparable loss if the injunction is not allowed. If in doubt, the court will decide the application on a balance of convenience.

6. The plaintiff has displayed the title deeds to the two suit properties issued on 28 June 1996 and 20 July 1994. He has therefore held title for about 20 years now. The defendant has never in the intervening period, filed any suit to claim that she deserves one acre of the suit properties. Following her own pleadings, it is also apparent to me that she either left the suit properties or was evicted in the year 1997. The suit properties are therefore in possession and occupation of the plaintiff.

7. Section 26 of the Land Registration Act, does provide that the Certificate of Title is prima facie evidence that the person named therein is the absolute and indefeasible owner. The said law is drawn as follows :-

26. (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

8. The plaintiff has displayed ownership of the two properties through the titles that he holds. He has held those titles for a considerable duration of time. The defence and counterclaim of the defendant have not set out any particulars of fraud against the plaintiff or any particulars of misrepresentation to claim that the titles were obtained fraudulently. The defendant of course claims to be entitled to one acre on the allegation that she purchased the same from one William Chepkonga in the year 1992. She has never sued the said William Chepkonga so that she can pursue her claim and William Chepkonga is not a party to this case. Neither is he at the moment the registered proprietor of the suit properties. There is no privity of contract between her and the plaintiff, and I have serious doubts as to how she will succeed in claiming the one acre from the plaintiff, on the strength of an agreement that she had with a third person who is not a party to this suit.

9. From the above discourse, I am of the opinion that the plaintiff has demonstrated a prima facie case with a probability of success. I therefore allow the application for injunction. I order the defendant and/or her servants/agents not to enter, stay, make any developments, utilize or in any other way interfere with any portion of the land parcels Kampi ya Moto/Kampi ya Moto/ Block 1/983 and 984 pending hearing and determination of this suit. In other words, she must stay away from the suit land until this case is

heard and determined.

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

11. It is so ordered.

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

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of : -

Mr. Chege holding brief for Mr. Ochien'g Gai for plaintiff/applicant

No appearance on part of M/s Mongeri & Co. for defendant/respondent

C/Asst: Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU