



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
ENVIRONMENT AND LAND DIVISION
ELC CASE NO. 154 OF 2016

DAVID KIMATHI MANYARA1ST PLAINTIFF

JUDITH KARIMI MANYARA.....2ND PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF MARSABIT.....1ST DEFENDANT

ZAINAB KUREWA.....2ND DEFENDANT

ABDIKADIR KUREWA.....3RD DEFENDANT

HALIMA K. KIMOGOLINTERESTED PARTY

R U L I N G

1. There are 2 applications which are the subject of this ruling.

2. The 1st application is filed by the Plaintiffs and is dated 6th September, 2016. It seeks orders:-

(1) That this application be certified urgent and be heard ex-parte in the instance.

(2) That prayers numbers 1,3 and 4 hereof be granted ex parte in the first instance.

(3) THAT this Honourable Court be pleased to issue an interlocutory prohibitory injunction to restrain the 1st Defendant whether by itself, its, agents, servants, representatives, employees, and/or anybody else acting or claiming on its behalf from evicting, repossessing, depriving, allocating, attempting to transfer, transferring, leasing, or in any other way alienating or disposing of or interfering in any manner whatsoever with the plaintiffs title to Plot L.R NO. 11969/8 MARSABIT TOWNSHIP pending the hearing and determination of this application inter partes and the main suit.

(4) THAT this Honourable Court be pleased to issue an interlocutory prohibitory injunction to restrain the 2nd and 3rd defendants whether by themselves, their family members, agents, servants, representatives, employees, and/or anybody else acting or claiming on their behalf from holding themselves out as owners, entering into, trespassing upon, occupying, constructing, leasing or selling or in any way interfering with the Plaintiffs peaceful use,

possession and quiet enjoyment of Plot L.R. NO. 11969/8 MARSABIT TOWNSHIP in any manner whatsoever pending the hearing and determination of this application inter partes and the main suit.

(5) THAT there be such other order as this Honourable Court deems fit and expedient in the aid of justice.

(6) THAT the costs of this application be provided for.

3. The Application is supported by the affidavit of David Kimathi Manyara and has the following grounds:-

(1) THAT the Plaintiffs are the bone fide and legal owners of Plot L.R. NO. 11969/8 MARSABIT TOWNSHIP and their title is absolute with all the privileges belonging or appurtenant thereto (hereinafter “ the suit property”).

(2) THAT for reasons unknown to the Plaintiffs the 1st defendant has put into possession the 2nd and 3rd defendants on the suit property and its seeking to maliciously, illegally and unlawfully allocate and/or transfer to them the same in spite of the plaintiffs protestations.

(3) THAT the 2nd and 3rd defendants have maliciously, intentionally, illegally and unlawfully and without any colour of right or the Plaintiffs permission whatsoever forcefully occupied, constructed some structures and are also interfering with the Plaintiffs peaceful use and enjoyment of the suit property.

(4) THAT 2nd and 3rd defendants forceful occupation and construction can be verified by this Honourable Court visiting the suit property.

(5) THAT despite the Plaintiffs numerous attempts and pleas requiring the 2nd and 3rd defendants to cease their illegal acts they have defied and continue to remain on the suit property and commit acts of waste thereon.

(6) THAT the Plaintiffs are eager to develop the suit property but the 2nd and 3rd defendants actions have hindered the same.

(7) THAT the plaintiffs attach profound sentimental and economic value into the suit property.

(8) THAT the Plaintiffs have a good prima facie case with a high probability of success.

(9) THAT the plaintiffs have reasonable fear that they shall be greatly prejudiced and imminently shall suffer irreparable loss and damage that is incapable of recompense in damages and this suit will be rendered nugatory if this application is not allowed.

(10) THAT it's only fair and just that this application be allowed until this matter is heard and determined.

4. The 2nd application is dated 28th November, 2016 and seeks orders;

1. That service of this application be dispensed with due its urgency.

2. THAT this Honourable Court be pleased to grant leave to HALIMA K. KIMOGOL to be enjoined as an interested party in this suit as a defendant.

3. THAT the orders issued by this Honourable Court on 13/09/2016 be varied or discharged to status quo so as to preserve and maintain the suit property LR. NO. 11969/8 MARSABIT TOWNSHIP.

4 .THAT costs be provided for.

5. The application is supported by the affidavit of HALIMA K. KIMOGOL and has the following grounds:-

1. This application is scheduled for hearing on 29/11/2016 and the applicant ought to participate in the hearing.

2. The Applicant is directly affected by the Orders of this Honourable Court made on 13/9/2016 touching on the property.

3. The 1st Defendant allocated LR. NO. 11969/8 MARSABIT TOWNSHIP the suit property to the applicant herein.

4. The suit property belongs to the applicant herein who is in actual possession of the same hence need to maintain stated quo.

5. This Honourable Court has powers to grant leave to the proposed interested party to be allowed as such and defend.

6. The Honourable Court will benefit from the materials and evidence placed before Court in support of her claim which will assist in arriving at a just decision.

7. Further grounds to be adduced at the hearing of the application herein.

6. On 29/11/2016, the parties proffered a Consent duly signed by their Advocates which they asked the Court to adopt as its order. The Consent is in the following terms:-

“ By Consent

(1) No party shall transfer , alienate or erect permanent structures on L.R NO. 11969/8 Marsabit Township pending hearing and determination of this suit.

(2) Parties to comply with Order 11 of the CPR 2010 within 60 days hereof.

(3) Liberty to apply.

(4) Mention for compliance and taking hearing date.

(5) Halima K. Kimogol be and is hereby enjoined as an Interested Party.

7. The Consent is adopted as an order of this Court.

8. The two opposite applicants are hereby heard and determined.

9. Costs shall be in the cause.

10. It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 29TH DAY OF NOVEMBER, 2016 IN THE PRESENCE OF:-

C.A: Daniel/James

Muthomi for Plaintiffs

Omboga for 2nd and 3rd Defendants

Omboga h/b for Godana for 1st Defendant

P. M. NJORGE

JUDGE