



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MILIMANI LAW COURTS
ELC NO. 213 OF 2015

KENNETH KAMOCHE NJOROGE (Suing as the

Personal Representative of the

Estate of LOISE NYAMBURA NJOROGE.....PLAINTIFF/APPLICANT

=VERSUS=

GEORGE MWANIKI RUGU.....1ST DEFENDANT/APPLICANT

LAND REGISTRAR THIKA.....2ND DEFENDANT/RESPONDENT

HON. ATTORNEY GENERAL.....3RD DEFENDANT/RESPONDENT

RULING

This Plaintiff in the application dated **9th March 2015**, seeks an order of injunction restraining the 1st Defendant from trespassing over **LR Ruiru/Kiu Block 2 (Githunguri)/3633**, pending the hearing and determination of the suit. The application is premised on grounds that the deceased is the registered owner of the suit property and had been in occupation since the year 2000. However, the Defendant has trespassed thereon claiming that he has title to the property.

The affidavit in support is sworn by the Plaintiff, being one of the administrators of the estate of the deceased. It is his deposition that prior to her demise of **13th March 2008**, the deceased had entered into a sale agreement with one **John Njogu Ngungu**, in respect to the purchase of the suit property on **1st September 2000**. Subsequently, a transfer was lodged at Thika Lands Registry on **6th September 2000**, and title issued on **8th September 2000**. The Plaintiff deposed that after the demise of his sister, their father made several but unsuccessful attempts to obtain the original title documents in respect to the suit property. **On 22nd August 2011**, he swore an affidavit in support of an application to the registrar for a restriction on the property. On the same date the registrar in a letter notified the area chief, Ruiru Location, that he would be visiting the disputed property on **6th September 2011**, at 10:00am to ascertain the status with a view of reconstructing a second edition register.

The Plaintiff referred to a letter by the District Lands Registrar to the Chief Lands Registrar dated **8th March 2012**, annexed and marked '**KKN6**', where the District Lands Registrar confirmed that register in

relation to the suit property could not be traced and was therefore seeking authority to open a second edition register. ***The Lands Registrar, Thika District on 4th May 2012 ,placed a notice in the Kenya Gazette Notice No. 5923*** for opening of a new register within ***60 days*** provided there was no objection to the same.

The Plaintiff deposed that he took over from their father after his demise on ***6th June 2012***, and before the second register was opened. He carried out a search on ***21st February 2013***, which revealed that the 1st Defendant was issued with title to the property. It was the Plaintiff's deposition that in a meeting called by the Chairman Githunguri Constituency Ranching Co. Ltd, it was established that the 1st Defendant illegally acquired the suit property and therefore the same ought to be cancelled.

Mary Njoki Njogu , swore an affidavit on ***5th May 2015***, in support of the Plaintiff's case wherein she deposed that she is the wife of ***John Njogu Ngungu*** and that she witnessed the sale of the suit property to the deceased on ***1st September 2000***. It was her disposition that her deceased husband purchased the suit property from one ***John Mbogo Gathi*** who was allocated the plot by Githunguri Constituency Ranching Co. Ltd. Subsequently, her husband was issued with title on ***16th June 1999***, and transferred the same to the deceased in the ***year 2000***.

The 1st Defendant swore a Replying Affidavit on ***16th April 2015***, in opposition to the application. His case is that he is the registered owner of the property and title issued to him on ***4th May 2010***, following a purchase from one ***Johana Mugo Mwaura*** on ***8th April 2010***. The 1st Defendant deposed that he carried out due diligence prior to the purchase of the plot and established that the said ***Johana Mugo Mwaura*** was a member of Githunguri Constituency Ranching Co. Ltd and owner of Plot No. 3633 measuring ***1 ¼ acres***. In support hereof, the 1st Defendant referred to copies of Ballot Paper ***No. 1543***, receipts, Share ***Certificate No. B 1453*** and a Clearance Certificate from the Githunguri Constituency Ranching Co. Ltd addressed to the District Land Registrar certifying that ***Johana Mugo Mwaura*** was the owner of ***Plot No. 3633*** and a request to issue title.

It was his deposition that upon payment of the purchase price to the vendor and transfer and clearance fees to Githunguri Constituency Ranching Co. Ltd, he was issued with the plot certificate and clearance certificate in favor of the vendor when after he applied for his title. Subsequently, he sub-divided the plot into ten equal sub-plots (***No. 6543 to 6552***) which he transferred to third parties. That as a result of the sub-division and transfer, he ceased being the owner of the suit plot and has no claim to entitlement thereon.

The 1st Defendant admitted that he was summoned by Githunguri Constituency Ranching Co. Ltd where he produced consistent documents to prove ownership. It was his deposition that Plaintiff's claim was dismissed as he was unable to produce ownership documents.

This application was further canvassed by way of written submissions which the Court has carefully read and considered the authorities cited. The issue for determination at this juncture is whether the Plaintiff has met the conditions for the grant of an injunction order as enunciated in the case of ***Giella v Cassman Brown & Company Limited (1973) EA 358***. The conditions are that, ***the applicant that an injunction would not be issued unless the Applicant establishes that he has a prima facie case with a probability of success. Secondly, that he would suffer irreparable injury which is not likely to be compensated by an award of damages. Thirdly, where the court is in doubt, it will decide the application on a balance of convenience.***

The Court has further carefully read the affidavit evidence and perused the annexures thereto. It is common that the parties are registered proprietors of the suit plot having both acquired ownership through purchase. It is also common that the plot is a sub-division of property owned by Githunguri Constituency Ranching Co. Ltd. The Plaintiff avers that the deceased purchased the property from ***John Njogu Ngungu***. In support of this averment, he annexed a copy of title issued to ***John Njogu Ngungu*** on ***16th June 1999*** . The widow of ***John Njogu Ngungu*** swore an affidavit that she witnessed the sale to the

Plaintiff's sister. She also deposed that her husband had purchased the plot from **John Mbogo Gathi** who was a member and allottee of **Githunguri Constituency Ranching Co. Ltd.** The Plaintiff also relied on the letters by the Lands Registrar, Thika to further proof ownership of the plot. The letters expressly state that the land register (green card) of the suit plot cannot be traced. The Registrar also complied with procedure by placing a notice in the Kenya Gazette of the intention to open a second edition register.

On the other hand, the 1st Defendant averred that he was a purchaser of the suit plot from **Johana Mugo Mwaura** who was a member and allottee of **Githunguri Constituency Ranching Co. Ltd.** He availed copies of receipts, ballot paper, share certificate and clearance certificate evidencing that the said **Johana Mugo Mwaura** was the allottee of the disputed plot.

Both parties averred that they were summoned and appeared before **Githunguri Constituency Ranching Co. Ltd** to present their ownership documents. They both pointed fingers that the other's documents had been disowned by the company. Unfortunately, none of the parties produced the decision made by the company and therefore this Court is unable to ascertain whether there was a double allocation of the plot or who among the Plaintiff or 1st Defendant acquired title to the plot illegally, fraudulently or through a corrupt scheme.

It is the Courts finding on the foregoing that both parties have established an interest over the suit plot. The issues as to whether there was a double allocation or the plot was acquired fraudulently by either party is a matter for determination upon trial. At this point, the question is whether the 1st Defendant ought to be restrained from dealing with the property pending the disposal of the suit. The 1st Defendant at Paragraph 8 of his affidavit deposed that he no longer has entitlement over the plot as he has caused the same to be sub-divided into sub-plots and transferred them to third parties not before court. Upon careful perusal of the annexures, the Court notes that the Defendant only availed a copy of mutation form. This form is an instruction upon the surveyor to sub-divide, change the boundary, partition or combine parcels. In this case, the 1st Defendant's instruction was for sub-division. This Court cannot ascertain whether the instructions were actualized. The 1st Defendant did not avail copies of sale agreements and are searches of the titles to the ten sub-plots as evidence of his allegation of transfer to third parties. It is also noteworthy that a search done by the Plaintiff on **21st February 2013**, indicates that the Defendant was the registered owner of thereof.

As the Court has stated elsewhere above that the issue of ownership is to be determined during trial, and also a finding that the 1st Defendant has not demonstrated to the satisfaction of this Court that he has sub-divided and transferred the sub-plots to third parties, the Court finds that the Plaintiff's application is substantiated and the same is allowed.

Having now carefully considered the instant Notice of Motion, the Court issues the following Orders;-

- 1. An order of injunction is hereby granted against the 1st Defendant, whether by himself, tenants, agents and/or servants from sub-dividing, undertaking further development, disposing off, or in any way alienating LR Ruiru/Kiu Block 2 (Githunguri)/3633 pending the hearing and determination of the suit or until further orders of the court.**
- 2. Parties to comply with Order 11 of the Civil Procedure Rules within 60 days and soon thereafter fix the matter for pre-trial directions.**
- 3. Costs of the application shall be in the cause.**

It is so ordered.

Dated, Signed and Delivered this 2nd day of December, 2016.

L. GACHERU

JUDGE

In the Presence of:-

Mr Ayieko holding brief for Mr Liachena for the Plaintiff

Mr Mugo holding brief for Mr Mbichire for the 1st Defendant

Mr Teres for the 2nd and 3rd Defendant

Vincent :Court Clerk

Court:

Ruling read in open Court in the presence of the above advocates.

L. GACHERU

JUDGE