



REPUBLIC OF KENYA
IN THE ENVIROMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 267 OF 2014

SAMWEL OJWANG MUMBO1ST PLAINTIFF

JAMES KIHARA2ND PLAINTIFF

VERSUS

JAMES FELIX GITAU GITHUNGURI.....DEFENDANT

RULING

(Application for injunction; application not opposed; and application allowed).

1. This suit was commenced by way of plaint filed on 24 September 2014. The case of the plaintiffs is that together with others, they formed Camapepas Self Help Group and bought land for sub-division among the members. The 1st plaintiff has averred that his plot was Miti Mingi/Mbaruk/5217, whereas for the second plaintiff, was Miti Mingi/Mbaruk/5215. The group mandated their Vice Chairman, one Zacharia Jaji (deceased) to process the individual title deeds but the plaintiffs have yet to get theirs. It later emerged to the plaintiffs that the said person had fraudulently sold the two plots to the defendant and colluded to register the title deed in the name of the defendant. The plaintiffs aver that they are in possession of the subject plots but that the defendant is threatening to dispossess them.

2. Together with the plaint, the plaintiffs filed an application for injunction, seeking to restrain the defendant from disposing the suit land or interfering with their possession, pending hearing of this suit. That application is the subject of this ruling. The application is supported by the affidavit of the 1st plaintiff, who has more or less repeated the averments in the plaint. He has inter alia deposed that the said Zacharia Jaji (deceased) fraudulently prepared some sale agreements purporting that the plaintiffs had sold land to the defendant; that the said Jaji was reported to the police; and that he was involved in other similar criminal activities.

3. Despite being served, the defendant has not entered appearance nor has he filed any response to the application. Mr. Gai for the plaintiff urged me to allow the application as it was unopposed.

4. The case of the plaintiffs is that the defendant, by fraud, got himself registered as proprietor of what they consider to be their rightful parcels of land. The defendant has not filed any papers to refute the claims. I cannot at this stage determine for sure whether the defendant's registration was fraudulent, for that can only be determined after trial, but I think the balance of convenience lies in preserving the subject matter of the suit and for status quo to be maintained pending hearing of the suit.

5. I therefore make the following orders pending hearing and determination of this suit:-

1. That the defendant is hereby barred from selling, charging, leasing, or in any other way disposing of the land parcels Miti Mingi/Mbaruk/5215 and 5217.
 2. That an order of inhibition is hereby issued, barring the registration of any disposition in the register of the land parcels Miti Mingi/Mbaruk/5215 and 5217.
 3. That the defendant is hereby barred from entering, developing, or in any other way interfere with the plaintiffs' possession of the land parcels Miti Mingi/Mbaruk/5215 and 5217.
4. Costs of this application will be costs in the cause.

It is so ordered.

Dated, signed and delivered in open court this 12th day of March 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :-

Mr Magata holding brief for Mr Gai for plaintiff

Defendant: absent

Emmanuel Maelo : Court Assistant

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU