



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 94 OF 2015

TIKOO OLE SADERA1ST PLAINTIFF

SUBEYO OLE LEMEIN2ND PLAINTIFF

RAPHAEL KOIKAI3RD PLAINTIFF

VERSUS

JAMES KAMAKEI KARIA.....DEFENDANT

RULING

(Application for injunction; principles to be applied; applicants alleging that defendant has obtained their land by fraud; there being a suit filed before the land disputes tribunal asking 1st plaintiff and defendant to share the land; no appeal against the said decision nor any suit challenging it; 1st plaintiff having entered consent to give effect that decree; injunction having effect of upsetting that decree; whether in the circumstances fit to grant injunction; application dismissed)

1. The plaintiffs commenced this suit on 31 March 2015 through plaint and together with the plaint, he filed an application for injunction which is the subject of this ruling. That application was served upon the defendant but the defendant did not file any response to it and neither did he appear at the hearing of the application. All the same, I still need to be convinced that the plaintiff is deserving of the prayers sought.

2. The case of the plaintiffs is that the 1st plaintiff, as member of the Olopolos Group Ranch, was allocated in the year 1995, the land parcel CIS Mara/Ololulung'a/3493 measuring approximately 36 acres and that he took occupation to date. In the course of years, he sold 8 acres to one Zakayo Ruto Kiprotich who later transferred his interest to the 2nd plaintiff and who took occupation in the year 2005 to date. In the year 2003, the 3rd plaintiff purchased 4 acres from the 1st plaintiff and took occupation to date. It is averred that the plaintiff has been leasing part of this land to the defendant at a fee. It is said that the 1st plaintiff discovered some typing errors in his title deed and he gave it to the defendant to rectify. Instead of the defendant rectifying the errors, he instead sub-divided the land into two parcels, one portion measuring 11 acres registered as CIS Mara/ Ololulung'a/5585 and the second portion measuring approximately 24.71 acres registered as CIS Mara/Ololulung'a/3493 and which the defendant registered in his name. It is averred that this registration was procured by way of fraud inter alia through forgery. It is said that in a desperate attempt to save his land, the 1st plaintiff filed a dispute at the Narok Land Disputes Tribunal which ruled in favour of the 1st plaintiff, but was reversed by the Appeals Committee , which is said to have ruled that both parcels belong to the defendant. It is averred that due to pressure from the public, the defendant now sub-divided the land parcel No. 3493 into two portions, one portion

measuring 6.22 ha being parcel No. 12278 which he registered in his name, and the other portion measuring 3.77 ha , being parcel No. 12279, which he registered in the name of the 1st plaintiff and his wife. This is said to also have been done through fraud. In this suit, the plaintiffs want a permanent injunction to restrain the defendant from dealing with the parcels of land CIS Mara/Ololulung'a/3493, 5585,12278 and 12279 and cancellation of the titles issued.

3. In this application for injunction, the plaintiff wants the defendant restrained from entering, cultivating, transferring or dealing with the four mentioned properties, pending hearing of this suit. In his supporting affidavit to this application, the 1st plaintiff annexed copies of documents showing that he was a member of the Group Ranch but that the defendant was not. He also annexed proceedings of the Land Disputes Tribunal at Narok. I have seen the proceedings which held that the defendant do retain title to the parcel No. 5585 but have the other parcels revert to the plaintiff. The Appeals Committee held that the 1st plaintiff and defendant share the land because they had entered into some sort of agreement. That decision was adopted by the Narok Court on 27 September 2011 in Narok Land Case No. 10 of 2010. Pursuant to that decree, an application was made by the defendant in that case, to have the 1st plaintiff evicted from the land parcel No. 12278 and a consent was later entered on 13 November 2014, to have a surveyor point out the boundaries to the parties. That exercise was scheduled to be conducted on 30 March 2015 and it will be noted that the plaintiffs filed this suit on 31 March 2015 together with this application for injunction.

4. I have considered the application. To succeed in an application for injunction, one needs to demonstrate a prima facie case with a probability of success and show further that he stands to suffer irreparable loss. If the court is in doubt, it may decide the application on a balance of convenience. These principles were laid down in the case of *Giella v Cassman Brown (1973) EA 358*.

5. It will be observed that there is already in existence a decree passed in the Narok Magistrate's Court. From what I can see in the application for eviction filed in that suit, the defendant seeks to have the plaintiff evicted from the land parcel No. 12278. I have seen the consent whereby the parties, in the Narok Magistrate's Court, agreed to have a surveyor demarcate the boundaries between the land parcels No. 12278 and 12279. I believe that this consent was entered into so that the decree can be given effect. No appeal has been preferred against that decree and I have no pleadings of whatever kind seeking to nullify the decisions of the Land Disputes Tribunal. It will be noted that the 1st plaintiff has actively been participating in the suit and has even given a consent on demarcation of the land parcels. In essence, what the plaintiffs want through this order of injunction, is to upset execution of the decree in the Narok Magistrate's Court. I am afraid that I cannot issue an order that will go contrary to the decree in the Narok Magistrate's Court without the appropriate pleadings. I also find it odd that the 1st plaintiff has been actively participating in the matter without any quarrel but now seeks an injunction.

6. From the above, I am not convinced that the plaintiff has tendered a prima facie case with a probability of success. The balance of convenience also tilts in having the status that has been directed by the Narok Magistrate's Court, for which there is a decree, maintained. As I stated earlier, issuing the orders herein will be tantamount to reversing the decision of the Narok Magistrate's court without being seized with the appropriate pleadings.

7. For the above reasons, I find no merit in this application and hereby dismiss it. I however make no orders as to costs since the defendant did not file anything to oppose it.

It is so ordered.

Dated, signed and delivered in open court at Nakuru this 13th Day of May 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of : -