



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 6 OF 2015

AGNES CHENGANGAT KAMAR PLAINTIFF

VERSUS

OKUKU OKECH DEFENDANT

RULING

1. The applicant filed a Notice of Motion dated 7/1/2015 in which she seeks a temporary injunction restraining the respondent or his servants from, entering, occupying, using or in any other way interfering with the plaintiff's user and occupation of **Plot No. B3 at Murkwijit Trading Centre** (suit land). The applicant contends that she bought the suit land from one **John Wekesa Wanyonyi** the husband of **Leonida John** (deceased) who was the allottee of the suit land.
2. The applicant states that she paid all the outstanding rates to the County Government of West Pokot who are the predecessors of West Pokot County Council who had allotted the suit land to the deceased. She also paid transfer fees to the County Government of West Pokot. She took a surveyor to the ground who put in place beacons marking the boundary of the suit land. The respondent uprooted the beacons and has since been hostile to the applicant.
3. The applicant's application is opposed through the respondent's replying affidavit sworn on 26/2/2015. The respondent contends that the suit land was initially allotted to **Bernard Wafula Wanamu** who sold it to his late father **Omondi Okech**. That his late father took possession of the suit land and constructed stores on the same after he put up a posho mill on an adjacent plot which belonged to him. The respondent further states that the deceased who was not the owner of the suit land attempted to sell the suit land to one **Atsango wakhungu** on 16/5/1988 but that the said Atsango Wakhungu or the deceased never occupied the suit land as it did not belong to the deceased.
4. I have gone through the applicant's application as well as the supporting affidavits together with the further affidavit of the applicant. I have also gone through the replying affidavit of the respondent. The applicant is contending that she bought the suit land from the husband of the original allottee. On the other hand, the respondent is contending that the deceased was never the allottee of the suit land which her husband sold to the applicant. The principles for grant of a temporary injunction were well set out in the case of **Giella -vs- Cassman Brown Co. Ltd 1973 EA 358**. First, an applicant must demonstrate that he has a prima facie case with probability of success. Secondly, an injunction will not normally be granted unless otherwise an applicant might otherwise suffer irreparable loss which may not be compensated in damages. Thirdly, if the court is in doubt it will decide the application on a balance of convenience.
5. In the instant case, the applicant has exhibited a hand written letter dated 21/5/2014 which confirms that according to the County Government records, Plot B3 belongs to Leonida John. The

letter is received at the County Revenue Office of the County of West Pokot on the same date as per the stamp on it. The applicant has also annexed two receipts dated 28/5/2014. One receipt is for payment of Kshs.27,250/= being payment of plot rent for the suit land. The other receipt is for Kshs.3,000/= being payment of plot transfer fees for the suit land.

6. The respondent on the other hand has annexed documents to his replying affidavit which show that the suit land as at 1975 belonged to Bernard Wafula. As at 5/8/1976 the suit land's ownership had changed to Okech Omondi. Okech Omondi is the father of the respondent who has since died. The respondent has also annexed documents to show that in 1988 it is Bernard Wafula who paid plot rent for the suit land to County Council of Pokot. Other documents show that it is Omondi Okech who paid plot rent for the suit land to Municipal Council of Kapenguria in respect of the suit land. The respondent has further annexed a copy of sale agreement dated 16/5/1988 between the deceased and Atsango Wakhungu. The deceased sold the suit land to Atsango Wakhungu for Kshs.8,500/=.
7. Further documents show that after the deceased had sold the suit land, she went to her lawyers who wrote a letter dated 3/6/1988 to County Council of Pokot in which she was complaining that she had been prevented from clearing payment of plot rent on allegations that the suit land belonged to someone else. It is important to note that the deceased paid Kshs.800/= to the County Council of Pokot on 16/5/1988. This is the same day she sold the plot to Atsango Wakhungu. On the following day when she went to clear the balance of Kshs.100/=[This is as per letter of 3/6/1988 from her lawyers], she was told that she could not pay the balance as she was not the owner of the suit land. It is strange that the deceased could be allowed to pay Kshs.800/= on 16/5/1988 as owner of Plot B3 and on the following day, she is denied payment of the balance on ground that she was not the owner of the suit land.
8. The husband of the deceased in his further affidavit had tried to explain the contradiction by claiming that the deceased had two plots at Murkwijit trading centre being Plot No. B3 the suit land and Plot C6 and that though the deceased had initially wanted to sell Plot B3 (suit land) to Atsango Wakhungu but that she finally sold Plot C6 to Atsango Wakhungu. There is nothing to show that the deceased owned a plot known as C6 at Murkwijit trading centre. The agreement between the deceased and Atsango Wakhungu is clear that the deceased was selling Plot B3 (suit land).
9. It is clear that the applicant has not demonstrated that she has a prima facie case with probability of success in view of the documents presented by the respective parties. It is clear that the applicant is not in possession of the suit land. It is the respondent who is in possession of the suit land. This explains why the applicant sought assistance of the OCS Kapenguria to implement any orders which she may have been granted. The orders were probably meant to remove the respondent from the suit land if the same would have been granted. The applicant bought the suit land on 28/5/2014. She has not taken possession. There is no loss which she will suffer which will not be compensated in damages should it turn out that the plot belonged to the deceased whose husband sold the same to her.
10. There are serious doubts as to the ownership of the suit land. This application has to be decided on a balance of convenience. It is clear that it is the respondent who is in possession. An injunction cannot be given in the circumstances. The upshot of this is that the applicant's application fails. The same is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this **24th** day of **June, 2015**.

E. OBAGA

JUDGE

In the presence of Mr. Bungei for Mr. Kiarie for applicant and Mr. Onyancha for Mr. Katina for respondent.

Court clerk – Isabellah.

E. OBAGA

JUDGE

24/6/2015