



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT NAKURU
ELC NO 488 OF 2013

KIPRONO CHERUIYOT.....1ST PLAINTIFF
STANLEY KETON.....2ND PLAINTIFF
SAMSON KAPKIAI CHUMO.....3RD PLAINTIFF
LUKA KORIR KIPKURUI.....4TH PLAINTIFF
GEORGE S LAGAT.....5TH PLAINTIFF

VERSUS

GEORGE K MOROGO.....1ST DEFENDANT
SHADRACK KITTONY.....2ND DEFENDANT
SAMSON CHEMASE.....3RD DEFENDANT
JOHN K LAGAT.....4TH DEFENDANT
SAMUEL CHESIRE.....5TH DEFENDANT
ABEDNEGO SIABELI.....6TH DEFENDANT
RENSON KORIR.....7TH DEFENDANT
DAVID BIWOT.....8TH DEFENDANT

RULING

(Application for injunction; property having been of a land buying company that was subdivided; plaintiffs being owners of the subdivided portions; proposal to reallocate the land; plaintiffs claiming that the reallocation is illegal and seeking to stop the resurvey; prima facie case established; application for injunction allowed)

1.This suit was commenced by way of plaint on 31 July 2013. The case of the plaintiffs as pleaded in the

plaint, is that they are directors/officials of Kipsyen Farm Limited which company owned a land parcel described as Kampi Ya Moto/Kampi Ya Moto Block 6/288 (parcel No. 288) which formed part of the bigger parcel Kampi Ya Moto/ Kampi Ya Moto 6/Kipsyen. The plaintiffs have pleaded that the title to the parcel No. 288 was surrendered for subdivision, and the same was subdivided into 212 plots and distributed to shareholders. The plaintiffs themselves were allotted the parcels Kipsyen Trading Centre B/ 185, 56, 31, 110 and 50 respectively. Their quarrel with the defendants is that despite this, the defendants are in the process of re-demarcating the land with a view of reallocating the same afresh. In the suit, the plaintiffs have asked for orders seeking a declaration that the land parcel No. 288 is no longer available for re-demarcation or re-allocation; and a permanent injunction to restrain the defendants from trespassing or re-demarcating the titles that resulted after the subdivision of the land parcel No. 288, including their title numbers 185, 56, 31, 110, and 50 respectively.

2. Together with the plaint, the plaintiffs filed an application dated 31 July 2013 which is the subject of this ruling. The application is one of injunction brought pursuant to the provisions of Order 40 of the Civil Procedure Rules, 2010. The substantive order sought is for injunction to restrain the defendants from carrying out a re-survey, constructing, or adjusting the boundaries to the individual 212 plots and particularly the plots owned by the plaintiffs. The plaintiffs filed several affidavits to support their application. The affidavits are lengthy, but in a nutshell, their position remains that the plot No. 288 has been subdivided and allocated and the defendants cannot purport to subdivide or re-allocate the same afresh.

3. The defendants filed defence, and filed several affidavits of their own, to oppose the application. Their position in summary, is that the subdivision was done irregularly and the same was cancelled. They have averred that the subdivision led to encroachment of public utilities and road reserves. It is their case that the land has already reverted back to the parent title No. 288 and can therefore be re-allocated.

4. I have considered the rival positions taken by the parties and the submissions of counsel filed in support and in opposing the subject application. The parties herein are members of Kipsyen Farm Limited. This is a land buying company which purchased several parcels of land including the land parcel No. 288. It appears to me, that at some point, which should be around the year 2001, going by a letter dated 6 September 2001 from the Director of Surveys annexed to the plaintiffs' supporting affidavit, that the land parcel No. 288 was subdivided and a new Registry Index Map for 212 plots created. Allotment letters were issued in the year 2003 and some persons have obtained titles to the subdivided portions. It seems as if some persons may have missed out, or were not happy with the allocation, or probably there was a problem with the subdivision on allegation that they encroach on public utilities (it is difficult to state with finality at this point of the proceedings what exactly the problem was), so that a proposal to revisit the subdivision was made in the year 2010. The defendants state that the subdivided titles have already been cancelled, but I am not sure that this is the case, for I have not seen any explicit document that cancels the earlier allocation of the land.

5. The test to be applied when considering an application for injunction is that the court needs to be satisfied that the applicant has laid down a prima facie case with a probability of success and demonstrate that he stands to suffer irreparable loss if the injunction is not granted. If in doubt, the court will decide the application on a balance of convenience. These were laid down in the case of **Giella vs Cassman Brown (1973) EA 358**. Looking at the totality of the case of the plaintiff as presented and the reply of the defendants, I think the plaintiffs have laid down a prima facie case with a probability of success, for they have shown that at some point the land parcel No. 288 was subdivided and allotted to them. As I stated earlier, I have not seen an explicit cancellation of the subdivisions although a proposal to cancel was tabled. The balance of convenience also tilts in favour of the plaintiff, for allowing the proposed alterations to proceed, will alter the character of the land in question and disturb the status quo.

6. For the above reasons, I do allow the application for injunction. I make the following orders :-

- (i) *That pending the hearing and determination of this suit, an order of injunction is hereby issued stopping the defendants from carrying out a re-survey, construction, or in any other manner adjusting the boundaries of the plot numbers 185, 59, 31, 110, and 50, which arose out of the*

subdivision of the land parcel Kampi Ya Moto/ Kampi Ya Moto Block 6/ 288.

(ii) That costs of the application do abide the outcome of the suit.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 6TH day of October 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :-

Mr Mwalo holding brief for Mr Mugambi Nguthari for plaintiffs/applicants

Mr Kagucia present for defendants/respondents

CA: Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU