



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L NO. 467 OF 2013

COUNTY GOVERNMENT OF UASIN GISHU.....PLAINTIFF/APPLICANT

VS

UASIN GISHU LAND REGISTRAR.....1ST DEFENDANT/RESPONDENT

JOHN KEEN KIPLAGAT SONGOK

& DAVID SEREM.....2ND & 3RD DEFENDANT/RESPONDENT

THE PRESBYTERIAN FOUNDATION

(P.C.E.A. AYUB KINYUA PARISH).....4TH DEFENDANT/RESPONDENT

RULING

(Application for injunction; plaintiff alleging that suit land is public land granted to it by the Government; Land having been allotted to the 2nd and 3rd defendants who sub-divided it and later sold part of it to 4th defendant; 2nd and 3rd defendants asserting that they got title procedurally; 4th defendant arguing that it is a bona fide purchaser for value; principles to be applied in an application for injunction; prima facie case; case of all parties being heavily contested; best in the circumstances not to make any pronouncement on prima facie case; balance of convenience; how best to preserve subject matter of suit; status quo ordered to be maintained and order of inhibition issued)

The application before me is that dated 4 October 2013 filed by the plaintiff. It is an application for injunction and it principally seeks orders to have the defendants restrained from any dealings on the property described as I.R 3738 (L.R No. 778/5/XXVII) which is said to have been converted into Eldoret Municipality Block 10/8, pending the hearing and determination of this suit. In the alternative, the plaintiff has sought to have the status quo maintained and an order of inhibition be issued to restrict the 1st defendant from any dealings on the property pending the hearing and determination of this suit. The application is opposed by the 2nd, 3rd and 4th defendants.

Before I embark on the application itself, a little background is necessary.

This suit was instituted on 4 October 2013 by way of plaint. It is the contention of the plaintiff that it is the proprietor of the land parcel I.R 3738 (L.R No. 77/5/XXVIII) (the suit land) which land is said to be registered under the Registration of Titles Act (CAP 281) (repealed). It is the position of the plaintiff that the suit land was allocated by the colonial government on 20 April 1933, to the Municipal Board of Eldoret for a term of 99 years. It is the contention of the plaintiff that the land was meant to be a public utility to be used as a stock sale yard and outspan. It is averred that on 5 June 1996, the 3rd and 4th defendants illegally and fraudulently caused the property to be converted from the regime of the

Registration of Titles Act, to the Registered Land Act (CAP 300) (repealed). Various particulars of fraud are pleaded against the 2nd and 3rd defendants, inter alia including the reason that there was collusion with the land officers to register the suit land in the names of the 2nd and 3rd defendants, when the same was a public utility. In the suit, the plaintiff inter alia wants this court to declare that the suit land is public utility and was never available for allocation. The plaintiff also wants orders to have the titles of the defendants revoked.

All the defendants, save for the 1st defendant, have filed Defences and Replying Affidavits to the subject application. The case of the 2nd and 3rd defendants is that on 28 February 1992, they applied to be allotted the land parcel, and vide an allotment letter dated 24 August 1995, the Commissioner of Lands did issue an allotment letter to them in respect of the land parcel Eldoret Municipality Block 10/8 measuring 2.1 hectares. The 2nd and 3rd defendants accepted the offer and made all requisite payments needed to have title issued to them. On 5 June 1996, a lease over the said land was drawn and later a Certificate of Lease was issued to them. In the year 2000, they proposed to sub-divide the land which proposal was approved. The land was then sub-divided into three parcels, namely Eldoret Municipality Block 10/1143 (0.8099 Ha) , 1144 (0.4452 Ha) and 1145 (0.8533 Ha). The land parcel No. 1143 was sold in the year 2000 to the 4th respondent who became registered as its proprietor on 4 September 2000. It is the position of the 2nd and 3rd defendants that they acquired good title to the land and that all requisite procedures were followed. They have contended that if the land in question is public land, then it is only the National Land Commission and the County Land Management Board who have capacity to file suit over the said land. They have also filed a counterclaim seeking a declaration that they are the proprietors of the land parcels Eldoret Municipality Block 10/1142, 1143, 1144, and 1145 which are said to be the resultant parcels from Eldoret Municipality Block 10/8.

The case of the 4th defendant is that vide a sale agreement of 28 November 1998, it purchased the land parcel Eldoret Municipality Block 10/1143 from the 2nd and 3rd defendants who at that time held title over the said land. They later became registered as proprietors and were issued with a certificate of lease on 4 February 2003. The 4th defendant has averred that it is a purchaser for value and the rightful proprietor of that land parcel. It has been contended that the plaintiff has only filed this suit because the Governor is facing contempt of court proceedings arising from a suit Eldoret High Court Civil Case No. 140 of 2009 where the 4th defendant is plaintiff against some squatters said to be on the land.

I invited the parties to file written submissions but the only submissions that I received were from counsel for the 4th defendant. I cannot underscore the importance of submissions, for it is from submissions, that any pronouncement of the court on a matter can be enriched. Be as it may, it was the argument of counsel for the 4th defendant, that any injunctive orders will violate the constitutional rights of the 4th defendant to own and enjoy the use of its land. He further argued that the plaintiff does not have a prima facie case with a probability of success and that the plaintiff's suit is time barred. It is also contended that the plaintiff does not have locus standi to institute the suit.

The matter before me is an application for injunction and the principles for the grant of an injunction were laid down in the case of *Giella v Cassman Brown (1973) EA 358*. First, the applicant needs to demonstrate a prima facie case with a probability of success; secondly, the court needs to be alive to the tenet that an injunction will not normally be granted unless damages are an inadequate remedy; and finally, if in doubt, the court will decide the matter on a balance of convenience. When faced with an application for injunction, the court needs to make a determination of how best to preserve the subject matter of the suit pending litigation and in my view, unless convinced that the applicant has not shown any arguable case, needs to ensure that the subject matter of the suit is preserved, so as to avoid the subject matter of the litigation being lost.

I appreciate the case of the plaintiff being that the suit land is land that was vested in the former Municipal Boards for a public purpose and that the allocation of the land to the 2nd and 3rd defendants was done irregularly by the Commissioner of Lands. On the other hand, the 2nd and 3rd defendants have argued that the land was allotted to them procedurally and that they got good title to it. The case of the 4th defendant is that it is a bona fide purchaser for value. The position of the plaintiff is that the land is still registered under the RTA and that they hold a 99 year lease from the year 1932. The position of the 2nd

and 3rd defendants is that they got title to the suit land as land registered under the RLA. I would probably have hoped to have some better detail from the plaintiff giving the proper genesis of the issues at hand, how the land has been in use, how they let the 2nd and 3rd defendants have the land for a considerable duration of time and how the conversion was done to the RLA regime. It may very well be that the position of the 2nd, 3rd and 4th defendants, especially on the point that the matter is time barred is valid.

That said, it is my view that the issues raised by the parties are so contested that I would rather not pronounce myself on the strength of the case of either party, nor make any pronouncements that would prejudice the case of either party, at least at this stage of the proceedings. All parties have made fairly strong arguments in support of their cases, which I think, are best left for determination when the substance of the suit has been heard. For that reason, I refrain from making any determination on whether or not the plaintiff has demonstrated a prima facie case, and in the circumstances of this case, it is in my view best, that I straight away decide the matter on a balance of convenience.

I think the balance of convenience lies in having the suit land preserved in the manner that it is. Unfortunately none of the parties annexed a valuation report, or other suitable report, to demonstrate how the land is currently being utilized. These are important details to avail in an application for injunction. I presume however that the parties are aware of who is in occupation of the land and how the land is being utilized, and I order that that status remain, until the conclusion of this suit. If there is doubt, this status can further be elaborated at a later stage of the proceedings. I further order that no party ought to make any additional structures or developments until the final conclusion of this suit. I also bar any party or person from selling, charging, or in any other way encumbering the suit land, and to buttress this position, I issue an order of inhibition, inhibiting the registration of any disposition on the suit land until the final conclusion of this suit. As to costs, I order that the same be costs in the cause.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 5TH DAY OF JUNE 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET.

Delivered in the presence of:

- 1. Mr. H.K. Aseo h/b for Mrs. Boinett of M/s. Boinett & Bett Advocates for plaintiff/applicant.***
- 2. Miss. B.J. Maina of the state law office present for 1st defendant and h/b for Mr. Lel of M/s. Lel & Bungei Advocates for 2nd & 3rd defendants/respondents and h/b for Mr. Mutitu of M/s. Mutitu Thiong'o & Advocates for 4th defendant/respondent.***