



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 70 OF 2014

EDGAR ERICK OMOTO & SEVEN (7) OTHERS PLAINTIFFS

VERSUS

SAMUEL KISORIO MOIBEN DEFENDANT

RULING

1. The applicants are individuals who on various dates between 2002 and 2012 bought land from the respondents. The respondent is owner of LR NO 18894 (Grant NO 77488). The applicants paid full purchase price and were put in possession. It was a mutual understanding between the applicants and the respondent that the land was to be subdivided and each applicant was to have his or her individual title. In 2009 the subdivision was carried out and completed. The respondent was to surrender the original title to facilitate subdivision and processing of individual titles.
2. On 16/7/2013 the respondent undertook in writing to surrender the original title to the applicants advocates but he has since reneged on the undertaking prompting the applicants to file a notice of motion dated 9th April, 2014 in which they are seeking an order of injunction restraining the defendant/Respondent either by himself, his employees, agents or servants from selling, alienating, disposing, subdividing, transferring or otherwise dealing with all that land reference number 18894 (Grant number 77488 situated at Kitale Municipality other than with the Plaintiff/Applicants pending the hearing of the main suit.
3. The applicants contend that they all purchased land from the respondent who put them in possession. They have constructed their homes on their respective parcels but that the respondent is unwilling to give them titles despite promises to do so.
4. The applicants application is opposed by the respondent through grounds of opposition filed in court on 23rd June, 2014. The respondent contends that the applicants application is misconceived and is bad in law and does not meet the conditions for grant of an injunction. The respondent also contends that the applicants are trespassers on the land as the transaction never got the consent of the land control board and as such, there can be no specific performance over void contracts.
5. I have carefully considered the applicants application as well as the grounds of opposition. I have also considered the submissions filed by the parties in support of their respective positions. It is not contested that the applicants bought land from the respondent. The respondent is contending that the applicants are not entitled to an injunction since they have not demonstrated that they have a prima facie case with probability of success.

6. The principles for grant of an injunction are now well settled. First an applicant has to demonstrate that he has a prima facie case with probability of success. Secondly an injunction will not normally be granted unless an applicant might otherwise suffer injury which might not be compensated in an award of damages. Thirdly if the court is in doubt, it will decide the application on a balance of convenience.
7. In the present case the applicants have annexed copies of sale agreements to their application showing that each of the 8 applicants bought land from the respondent. The respondent has indeed confirmed that in his defence. The respondent is only contending that the contracts between him and the applicants have become void for want of consent of the land control board. The issue which emerges for determination is whether the applicants can be said to have demonstrated that they have a prima facie case with probability of success in the circumstances.
8. The applicants bought land from the respondent. The respondent put them in possession. They have constructed homes on their respective parcels. They were put in possession on the understanding that the respondent was to carry out subdivision and provide individual titles. The applicants aver which averment is not controverted that survey was carried out in 2009 but the process is yet to be completed because the respondent has not surrendered the title for completion of the process. Since it is the respondent who put the applicants in possession of their respective parcels where they have carried out extensive developments, he cannot be heard to say that the applicants are trespassers on the land. In the case of *Steadman -Vs – Steadman* (1976) AC 536 at 540 it was held as follows:-

“If one party to an agreement stands by and lets the other party incur expense or prejudice his position on the faith of the agreement being valid he will not be allowed to turn around and assert that the agreement is unenforceable”

9. In Nyeri court of Appeal in Civil Appeal No. 6 of 2011 consolidated with Civil Appeal No. 26 and 27 of 2011 between Macharia Mwangi Maina & 87 others and Davidson Mwangi Kagiri [2014]e KLR the Court of Appeal Judges dealt with similar case as in the present one where the High Court had held that the appellants who had bought land from the respondent who had put them in possession were not supposed to be on the land as the transactions never received the consent of land control board. The Judges of the court of Appeal considered the circumstances under which the appellants bought their respective parcels and after considering cases submitted to them regarding failure to obtain consent of the Land Control Board arrived at a decision those cases were decided before the promulgation of the new constitution. They overturned the High Court decision which had granted eviction orders against the appellants.
10. Given the circumstances under which the applicants in the present case were put in possession of their respective parcels, I find that they have demonstrated that they have an arguable case against the respondent. It is clear that the applicant's right to their parcels is likely to be infringed by the respondent if no injunction is granted in terms proposed in the prayers in the application. I therefore find that this is a proper case where an injunction should be granted. I therefore allow an injunction in terms of prayer (c) and (d) of the notice of motion dated 9/4/2014.

It is so ordered.

Dated, signed and delivered at Kitale on this 31st day of July, 2014.

E. OBAGA

JUDGE

In the presence of Mr Ingosi for Mr Murango for applicants. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

31/7/2014