



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC. CASE NO. 1035 OF 2013

HON. JOHN NJOROGE CHEGE.....1ST PLAINTIFF/APPLICANT

FRANCIS KANJA.....2ND PLAINTIFF/APPLICANT

JOHN KARUGA.....3RD PLAINTIFF/APPLICANT

VERSUS

MWIKI COMPANY LIMITED.....DEFENDANT/RESPONDENT

RULING

Coming up before me for determination is the Notice of Motion dated 27th August 2013 in which the Plaintiffs/Applicants seek for orders of temporary injunction restraining the Defendant from occupying, developing or selling the parcel of land known as L.R. No. 8469/4/7(hereinafter referred to as the “suit property”) pending the hearing and determination of this Application and suit.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of the 1st Plaintiff, Honourable John Njoroge Chege, sworn on 27th August 2013 in which he averred that the Defendant bought land parcel known as L.R. No. 8469/14 measuring approximately 50 acres from Mukinyi Company Ltd, subdivided it and sold it to various individuals including himself. He produced copies of two title deeds for the said L.R. No. 8469/14 as well as for the suit property both of which are in the name of the Defendant. He further averred that the suit property lay between the stated L.R. No. 8469/14 and L.R. No. 8469/13 and was meant to be a public utility plot for the benefit of the residents of L.R. No. 8469/14. He further stated that contrary to their legitimate expectation, the suit property was subdivided by the Defendant/Respondent into plots which are earmarked for sale to unsuspecting members of the public. He further stated that the Defendant/Respondent’s actions are illegal, unlawful and malicious and ought to be stopped.

The Application is contested. The Defendant filed the Replying Affidavit of Robert Waireri, its Managing Director, sworn on 12th September 2013, in which he averred that the Defendant is a land buying and selling company which has settled many people within Kasarani-Mwiki area. He further averred that he is not aware that the 1st Plaintiff resides on L.R. No. 8469/13 or L.R. No. 8469/14. He further denied ever having any dealings with the Plaintiffs in respect to the suit property. He confirmed that the Defendant bought the suit property as well as L.R. No. 8469/14 from Mukinyi Enterprises Company Ltd. He further averred that a portion of the suit property was purchased by Karura Farmers while the Defendant

purchased the other portion which was amalgamated with L.R. No. 8469/14. He further disclosed that the Defendant surrendered the title for the suit property as well as the title for L.R. No. 8469/14 to the Commissioner of Lands and that the new parcel of land was assigned a new number being Nairobi Block 164 by the Commissioner of Lands. He further disclosed that the suit property has now been subdivided into 522 sub-plots with all the necessary approvals and processes being followed. He denied that the suit property is public utility land. He further pointed out that the Plaintiffs have not exhibited any authority by the other plot owners to file this suit.

In response thereto, the Plaintiffs/Applicants filed their Further Affidavit sworn by the 1st Plaintiff, Honourable John Njoroge Chege on 12th September 2013 in which he averred that he bought sub-plots derived from L.R. No. 8469/14 from the Defendant and that he has been resident thereon. He further stated that the Defendant informed the purchasers of subplots that the open spaces were reserved to serve as public utility spaces for the benefit of the residents of L.R. No. 8469/14.

Both the Plaintiffs and the Defendant filed their written submissions which have been read and taken into account in this ruling.

The main issue for determination in this Applicant is whether or not to grant the Plaintiffs the temporary injunction which they seek. In deciding whether to grant the temporary injunction sought after by the Plaintiffs, I wish to refer to and rely on the precedent set out in the case of **GIELLA versus CASSMAN BROWN (1973) EA 358** in which the conditions for the grant of an interlocutory injunction were settled as follows:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

Has the Plaintiff made out a prima facie case with a probability of success? In the case of **MRAO versus FIRST AMERICAN BANK OF KENYA LIMITED & 2 OTHERS (2003) KLR 125**, a prima facie case was described as follows:

“a prima facie case in a Civil Application includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

Looking at the facts of this case, the 1st Plaintiff has admitted that he purchased his plot which is a portion of L.R. No. 8469/14 from the Defendant. He further admitted that at the time of purchasing his plot, he was shown some open spaces on the original map of that parcel of land which were reserved for public utility. The Plaintiffs then state that the suit property is a public utility plot meant to serve the needs of occupants of L.R. No. 8469/14. However, the Plaintiffs produced copies of title deeds in respect of L.R. No. 8469/14 and the suit property, both of which are in the names of the Defendant. On its part, the Defendant contends that both L.R. No. 8469/14 and the suit property are private properties purchased by it from Mukinyi Enterprises Company Ltd and which have now been amalgamated and renamed Nairobi Block 164. From where I stand, I must say that the Plaintiffs have failed to convince this court that they hold any interest in the suit property. The 1st Plaintiff’s claims that the suit property is public land have not been substantiated. In fact, the Plaintiffs themselves produced a copy of a title deed of the suit property in the name of the Defendant which goes to prove that that is private property owned by the Defendant. This position has been supported by the Defendant which disclosed that it surrendered the two title deeds to the Commissioner of Lands for the purpose of amalgamating the two parcels of land into one parcel. Hence, at this interlocutory stage of these proceedings, I find that the Plaintiffs have not shown that they have a genuine and arguable case or that they have a prima facie case with high chances

of success at the main trial.

Since the Plaintiffs have failed to prove the first ground in the grounds set down in the celebrated case of **Giella** versus **Cassman Brown**, this Honourable Court need not venture into the other grounds. This position was upheld in the Court of Appeal case of **Kenya Commercial Finance Co. Ltd versus Afraha Education Society (2001) 1 EA 86** as follows:

“The sequence of steps to be followed in the enquiry into whether to grant an interlocutory injunction is ... sequential so that the second condition can only be addressed if the first one is satisfied...”

In light of the foregoing, I hereby dismiss this Application with costs to the Defendant.

DELIVERED AND SIGNED IN NAIROBI THIS 17TH

DAY OF OCTOBER 2014.

MARY M. GITUMBI

JUDGE