



Mariana v Letshego Kenya Limited; Kariuki (Interested Party) (Environment & Land Case E046 of 2023) [2024] KEELC 5356 (KLR) (16 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5356 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E046 OF 2023
MN GICHERU, J
JULY 16, 2024**

BETWEEN

NTIMOISA OLE MARIANA PLAINTIFF

AND

LETSHEGO KENYA LIMITED DEFENDANT

AND

STEPHEN MUNGAI KARIUKI INTERESTED PARTY

RULING

1. This ruling is on the notice of motion dated 22/1/2023. The motion which is by the plaintiff is brought under Sections 90(1), 96, 97 of the *Land Act*, Rule 16(d) of the *Auctioneers Rules*, Section 21(3) of the *Auctioneers Act*, Sections 1A, 1B and 3A *Civil Procedure Act* 2012 and Articles 45 and 46 of *the Constitution* of Kenya and all other enabling provisions of law.
2. The motion seeks the following orders.
 - ii. The court to issue orders against the defendant and any person restraining them from disposing of the suit land, known as Kajiado/Ewaso-Kedong/1489, pending the hearing and determination of this suit.
 - iii. Summons to issue to the District Land Registrar, Kajiado North and the chairperson of the Land Control Board Kajiado West to appear and witness on the status of the alleged sale and conveyance of the suit property by public auction.
 - iv. That the said defendant be estopped, either by themselves, their agents, servants, employees or persons under their instructions or from dealing with, transferring, trespassing onto, developing, altering or interfering with the actual or legal title of the subject property pending the hearing and determination of this suit.



- v. That the court issues injunctive orders against the interested party barring him from carrying out eviction against the plaintiff pending the hearing and determination of this suit.
 - vi. That the court do issue a temporary inhibition against any further dealing over the suit property of whatsoever form they take.
 - vii. Costs of this application be provided for.
3. The motion is supported by an affidavit by the applicant dated 22/1/2023 and seventeen (17) grounds. In summary the applicant states as follows. Firstly, he used to be the registered owner of the suit land. Secondly, on 22/1/2018, he applied for a loan of Kshs. 1 Million from the defendant using the suit land as security. Thirdly, he repaid the loan to the tune of Kshs. 400,000/- until the year 2020 when he approached the defendant with a view to restructuring the loan. Fourthly, the defendant did not respond. Fifthly, the next thing that the plaintiff knew was that his land, whose value is Kshs. 40 Million had been sold to the interested party. The plaintiff was not issued with the requisite notices under the Land Act and the land was not valued as required by the auctioneers rules.
 4. The motion is opposed by the defendant and its recoveries lead has filed a replying affidavit dated 15/9/2023 which has twenty (20) annexures. In brief his reply is as follows. Firstly, the plaintiff applied for a loan of Kshs. 1 million and charged the suit land in this regard. Secondly, the plaintiff defaulted on the loan repayment from July 2018 to April 2022. The defendant issued the plaintiff with the requisite statutory notices but the plaintiff persisted in the default. Eventually the suit land was sold to the highest bidder through a public auction at Kshs. 2, 150,000/-. Its value as per the valuation report dated 9/8/2021 was Kshs. 2.8 million and not the Kshs. 40 million that the plaintiff is alleging.
 5. The interested party has also opposed the plaintiff's motion and has filed a replying affidavit dated 20/11/2023 in which he deposes as follows. Firstly, the prayers in the motion especially numbers (i), (ii) and (iv) have been overtaken by events because the interested party was issued with a title deed on 8/2/2023 after following all due process. Secondly, prayer (iii) is baseless and lacks merit because the Land Registrar and the chairman of the Land Control Board have no role to play in a public auction. Thirdly, the interested party conducted due diligence by visiting the offices of the auctioneers and the suit property. He was also shown the redemption notice issued to the plaintiff by the auctioneer as well as the valuation report. Finally, the valuation report by the Ministry of Lands gives the value of the land a figure close to that by the defendant's valuer.
- For the above and other reasons, the interested party prays for the dismissal of the motion because the plaintiff has a recourse in an award for damages in the event that this suit is successful.
6. Counsel for the parties were to file written submissions by 30/4/2024. By the time of writing this ruling on 20/5/2024, I have not received any submissions from any of the parties. I am therefore writing this ruling without the benefit of the written submissions. I have carefully considered the motion in its entirety including the grounds, the supporting affidavit, the replying affidavits and the annexures. I find that even though the notice of motion does not say it, what the plaintiff essentially seeks is an order of injunction to restrain the respondent from dealing with the suit land until the suit is heard and determined. This means that the application must meet the threshold established in the case of *Giella –versus- Cassman Brown* which is a *prima facie* with a probability of success and loss that cannot be adequately compensated with an award of damages. If the court is not sure of the two prerequisites, then it should look at the balance of convenience.
 7. Applying the above principles to this case, I find that the plaintiff has only two problems with the defendant and interested party. The first problem is that he was not issued with the requisite notice and the second one is that his land was undervalued. Since these two issues cannot be resolved at this



stage and they must go for trial, I find that it is fair to order that the status quo be maintained pending the hearing and determination of the suit. I am alive to Order 40 Rule 6 of the *Civil Procedure Rules* which provides as follows.

" Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for sufficient reason the court orders otherwise"

Bearing in mind the above sub rule, the order issued will last for only one year so it will be up to the plaintiff to prosecute his case within a period of one year otherwise the order will lapse. The issue of who is in occupation has not been canvassed adequately because neither the defendant nor the interested party has deposed about it. The order that I will issue is as follows.

" No dealings with the suit land by the defendant and the interested party or any person for a period of one (1) year or until the conclusion of the suit, whichever comes earlier".

Costs in the cause.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 16TH DAY OF JULY 2024.

M.N. GICHERU

JUDGE

