



REPUBLIC OF KENYA

High Court at Kerugoya

Environmental & Land Case 70 of 2012

PETER MWANGI MUCHIRIPLAINTIFF

VERSUS

NJUGUNA MICHUKI1ST DEFENDANT

HON. ATTORNEY GENERAL 2ND DEFENDANT

RULING

This is in respect of the plaintiff/applicant's Notice of Motion dated 10th December, 2012 and filed herein on 14th December, 2012 seeking the following interim orders against the 1st defendant/respondent pending the hearing of this suit i.e.

1.) spent

2.) spent

3. That pending the hearing and determination of this suit, an order of injunction do issue restraining the 1st defendant whether by himself, his agent, employees, servants and/or otherwise howsoever, from entering, occupying, residing on or otherwise claiming title or interest whatsoever in the property known as L.R. NO. JUJA/JUJA EAST BLOCK 1/1472 or any part thereof.

4. That pending the hearing and determination of this suit, an order of injunction do issue restraining the 1st defendant whether by himself, his agents, employees, servants and/or otherwise howsoever from selling, disposing off, leasing, charging, pledging, alienating or in any other manner whatsoever dealing with the property known as L.R. NO. JUJA/JUJA EAST BLOCK 1/1472 or any part thereof.

5. That the 1st defendant be condemned with the costs of this application.

The application was filed simultaneously with a plaint in which the plaintiff/applicant sought various remedies against the 1st defendant.

The application was supported by the plaintiff/applicant's affidavit to which were attached several annexures and by an order dated 13/2/2013, the applicant was granted leave to serve the 1st defendant by substituted service which was done by advertisement in "***The People***" newspaper of 19th February, 2013. There was no reply filed by either the 1st or 2nd defendant though duly served. This application is therefore undefended.

I have considered the application, undefended as it is, together with the supporting affidavit, annexures as well as the written submissions by the applicant/plaintiff's advocate Mr. Karanja.

The parameters within which I must consider this application were clearly set out in the case of ***GIELLA VS CASSMAN BROWN & CO. LTD 1973 E.A 358*** and these are that I must be satisfied that the applicant has a prima facie case with a probability of success and that he would suffer irreparable injury which is uncompensable in damages if the order sought is not granted. If in doubt, then I would have to determine the matter on a balance of convenience.

The un-controverted facts which come out of the plaintiff/applicant's supporting affidavit is that way back in 1968 when he was a member of Kiganjo Location Ranching Company Limited, he was issued with a share certificate No. 1472 which entitled him to ballot for a plot No. 1472 for which he paid Ksh. 350/= and was issued with a receipt No. AQ 509470 at Kiambu Lands Office and was eventually issued with the title deed for L.R No. JUJA/JUJA EAST BLOCK 1/1472 measuring 1.174 Hectares on 31/7/1992 and took possession of the same. A copy of the title deed was annexed - see annexure P M M 5.

However, in July 2012 when he visited the Lands Office Thika to conduct a search on the said property so as to transfer the property to his son Francis Karanja Mwangi, the Land Registrar refused to issue the official search and indicated on the receipt that "**TITLE DUPLICATED BY NJUGUNA MICHUKI I.D NO. 3444972**". The applicant/plaintiff denies having procured the alleged duplication of title No. JUJA/JUJA EAST BLOCK 1/1472 to the said Njuguna Michuki and neither does he know him and therefore the said duplication is fraudulent and irregular and the said Njuguna Michuki has no interest whatsoever in the said land. This duplication is therefore an infringement on his Constitutional right to own the said property.

Prima facie, the plaintiff/applicant is the registered proprietor of the parcel of land known as JUJA/JUJA EAST BLOCK 1/1472. He has produced a copy of the title deed issued to him by the Kiambu District

Land Registry on 31/7/1992. This is not disputed. The applicant/plaintiff has therefore satisfied the first test in the GIELLA CASE (supra).

As to whether or not the plaintiff/applicant would suffer irreparable injury which is uncompensable n damages if the order sought is not granted, it is not controverted that the plaintiff/applicant is the registered owner of the suit land as per the title deed issued to him in 1992. His right to that land is protected by Article 40 of the Constitution subject of course to the right of the state to acquire any land as provided for in sub-Articles 3, 4, 5 and 6 of Article 40. There is no evidence before me that the state is exercising any such right. Therefore, the duplication of the plaintiff/applicant's title by Njuguna Michuki or any other person is an infringement of the plaintiff/applicant's Constitutional right to the property in question and in my view, no amount of money can compensate the infringement of such right or atone for a clear transgression against the law if indeed it turns out that that is the case. The plaintiff/applicant has therefore also satisfied the second limb of the GIELLA case (supra).

That being my view of the matter, I allow the plaintiff/applicant's application dated 10th December, 2012 and grant the orders sought therein. There shall be no order as to costs.

B.N. OLAO

JUDGE

17/4/2013

Before B.N. OLAO – JUDGE

CC – Muriithi

Mr. Karanja for Applicant – present

No appearance for Respondent

COURT : Ruling delivered in open Court this 17th day of April, 2013 in the presence of Mr. Karanja for plaintiff/applicant.

No appearance for defendants/respondents.

B.N. OLAO

JUDGE

17/4/2013