



REPUBLIC OF KENYA

IN THE LAND AND ENVIROMENT COURT OF KENYA AT NYAHURURU

ELC NO 11 OF 2018

BERTHA WANJIRU MWERI.....1ST PLAINTIFF

EDWARD NDIRANGU MWERI.....2ND PLAINTIFF

VERSUS

SAMUEL NJOROGE MWANGI.....1ST DEFENDANT

KARANJA KAMONYO.....2ND DEFENDANT

EPHRAIM KARIUKI MUTURI.....3RD DEFENDANT

MARY WANGECHI GICHUHI.....4TH DEFENDANT

AND

JAMES MUKURE MWERI.....1ST INTERESTED PARTY

ERICK KAMWARO MWERI.....2ND INTERESTED PARTY

RULING

1. The Plaintiffs in this case filed their suit on the 19th February 2018 alongside which they filed an application by way of a Notice of Motion dated 14th February 2018 in which they had sought interim injunctive orders against the Defendants injuncting them from dealing with suit land No. LR LAIKIPIA/NYAHURURU/7981, 7982, 7983, 7984, 7985, 7986, and 7987 pending the hearing and determination of the application/ suit.
2. That on the 20th February 2018, the Plaintiff obtained interim orders pending the hearing of the application inter parties that is if the Defendants were not on the suit land.
3. That what followed was an application dated the 7th March 2018 filed by the interested parties herein wherein they sought to be enjoined to the proceedings.
4. Vide a ruling delivered on the 21st March 2018, this court allowed the said application enjoining both the interested parties herein to the proceedings and also issued orders for parties to exchange their pleadings so that the matter could be set down for hearing.
5. Pursuant to the delivery of the said ruling, Counsel for the Plaintiff prayed that his application dated the 14th February 2018 be set down for hearing inter parties wherein they sought injunctive orders against the Defendants pending the determination of the suit.
6. The Defendants filed their grounds of opposition to the said Application wherein the parties consented that the Application dated the 14th February 2018 be disposed of by way of written submissions.
7. I have considered the submissions by parties. The Plaintiff/Applicants' contention is that there be injunctive orders against the Defendant /Respondents from interfering with the suit lands. That the Respondents were intermeddling and trespassing on the suit land by cutting down trees thereby causing wanton destruction of the property. That the 1st and 2nd interested parties have even attempted to sell part of the suit land without consent of the parties yet the Applicants are the registered proprietors of the suit land by transmission

8. That although the 1st and 2nd interested parties are beneficiaries yet subject to section 79 of the Law of succession Act, it is only parties to whom grant has been issued who have the power to deal with the said property on the manner prescribed by the law.

9. They have no power to pass interest to the 1st -4th Respondents herein.

10. Counsel for the Applicants submitted that although the 1st Applicant passed away yet the suit had been filed jointly and the 2nd Applicant could ably proceed with the same. Secondly, that by virtue of the provisions of Section 82 of the Law of Succession Act, they were properly before the court.

11. The Applicant thus urged the court to grant them the interim orders so as to stop further wanton destruction of the suit property.

12. The Respondents and 1st interested parties' grounds of objection to the application dated the 14th February 2018 were to the effect that the Application did not satisfy the requirements for granting of the injunction as enshrined in the celebrated case of *Giella vs Cassman Brown*. That they did not have the locus standi to bring the said application to court more so to land reference No. Laikipia /Nyahururu/7982 and had no audience for being in blatant disregard of court orders. They further stated that the 2nd applicant is estopped from asserting that the 2nd interested party had no power to sell LR No. Laikipia /Nyahururu/7982 or any part therefore having purchased 2 acres out of the same from the interested party.

13. The 2nd Respondents and 1st interested parties contention was that the application was incompetent, bad in law, misconceived and an abuse of the court process and should be struck out.

14. I have considered the Application as well as the submissions and authorities cited for and against this application. The often cited case of ***Giella –vs- Cassman Brown & Company LTD (1973) EA 358*** is the leading authority on the conditions that an applicant needs to satisfy for the grant of an interlocutory injunction. An applicant needs, firstly to establish and demonstrate they have prima facie case with a probability of success, secondly that they stand to suffer irreparable damage/loss that cannot be compensated in damages if the injunction is not granted and they are successful at the trial, and thirdly in case the court is in any doubt in regard to the first two conditions the court may determine the matter by considering in whose favor the balance of convenience tilts.

15. My first task is to determine whether the Defendant/Applicant has demonstrated a prima facie case. A prima facie case was described as follows in the case of ***Mrao v First American Bank (2003) KLR 125***;

“..a prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard that is higher than an arguable case.”

16. The Origin of this matter is that land parcel No. LR LAIKIPIA/NYAHURURU/322,264,320 and 321 were registered in the name of the deceased, Samuel Mweri Macharia who was a father to the Applicants. That upon the deceased's demise, parcels No. LR LAIKIPIA/NYAHURURU/322,264,320 and 321 were confirmed to the deceased's beneficiaries through a grant in Succession Cause No. 870 of 1991. Later the same was consolidated into Land parcel No. LR LAIKIPIA/NYAHURURU/4909.

17. Subsequently No. LR LAIKIPIA/NYAHURURU/4909 was subdivided into parcels No. LR LAIKIPIA/NYAHURURU/7981, 7982, 7983, 7984, 7985, 7986, and 7987 and registered the Applicants' names. That pursuant to the instructions the Applicants that the parcels of land remain within the family as per their father's wish, some of the beneficiaries, the interested parties herein, had threatened and/or sold part of their inheritance to the Respondents who have then embarked on cutting down trees and wanton destruction of the properties without any authority from the Applicants.

18. The Applicant herein has shown prima facie, that they were issued with Certificates of title for the suit lands.

19. Section 26 of the land Registration Act obliges me to take the certificate of lease as conclusive evidence of proprietorship. It provides as follows :-

(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme

20. Applicant having demonstrated that he was the jointly registered owner of the suit properties namely No. LR LAIKIPIA/NYAHURURU/7981, 7982, 7983, 7984, 7985, 7986, and 7987 and having been issued with a certificate of lease, prima facie their title is indefeasible and the burden shifts to the Respondents to show or demonstrate that the title is challengeable within the provisions of the law.

21. Quite clearly it is not possible to make a final determination at this interlocutory stage on the validity of the Plaintiff/Applicant's title but the mere proof that he holds duly registered certificates which on the face of it were properly acquired is sufficient to lead the court to hold

that the Applicant has established a prima facie case.

22. On the second issue as to whether the applicant would suffer irreparable harm if the injunction is not granted, I have seen the sale agreements herein attached to the Respondents' affidavits as well as the list of documents herein and the submissions, it is clear that indeed the interested parties herein had sold part of the inherited parcels of land to the Respondents despite the same having not been registered in their names. It is therefore normal that the Applicants are apprehensive that they would suffer irreparable harm if the injunction was not granted.

23. Given such a scenario the court has a duty to consider whether or not to grant or deny the conservatory relief. Based on the above findings, I am convinced that the Plaintiff/Applicants have shown that they have beneficial interest in the suit land which is capable of being preserved and/or protected by means of an interlocutory injunction as we await the conclusion of this case.

24. Accordingly, I find that the Plaintiff/Applicant has established a prima facie case with a probability of success at the main trial. I do proceed to grant them order of injunction sought, with the result that the Applicant's Notice of Motion dated 14th February 2018 succeeds with costs to the Plaintiff/Applicant.

25. I now direct parties to comply with order 11 of the Civil Procedure Rules within 30 days from today so that the matter can be set down for hearing.

Dated and delivered at Nyahururu this 8th day of November 2018.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE