



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MURANG'A

ELC NO 437 OF 2017

BAKARI SHABAN GAKERE.....1ST RESPONDENT/PLAINTIFF

VERSUS

MWANA IDD GUCHU.....APPLICANT/1ST DEFENDANT

THE COUNTY GOVERNMENT OF MURANGA...2ND RESPONDENT/ DEFENDANT

THE NATIONAL LAND COMMISSION.....3RD RESPONDENT/DEFENDANT

THE HON ATTORNEY GENERAL.....4TH RESPONDENT/DEFENDANT

RULING

1. This is a ruling in respect to the Notice of Motion application dated 6/11/2018 as filed on 10/12/2018 by the Applicant/1st Defendant seeking the following orders;

- a. The Plaintiff's case be and is hereby dismissed for lack of locus standi on the part of the Plaintiff/ Respondent to institute this case in the first place.
- b. This case be and is hereby declared ill-founded, fraudulent, frivolous, vexatious, and devoid of merit and ought to be dismissed with costs as an abuse of the Court process.
- c. Pending the hearing of this application inter-parties, a temporary injunction be and is hereby granted prohibiting the Plaintiff, his agents' servants and/or his representatives from trespassing on plot no.68 (herein after called the suit land), and carrying out any activities therein or in any way interfering with the suit land until application is heard and determined.
- d. Upon dismissal of his suit, the Plaintiff, his agents, servants and/or his representatives be and are hereby permanently prohibited from trespassing on the suit land, carrying out any activities therein or in any way illegally interfering with the suit land.
- e. The OCS Muranga and the area chief be and are hereby ordered to enforce this order
- f. Cost of the application.
- g. Any other order the Court deems just and fair to issue.

2. The following are the grounds for the application; That following the ruling of this Honourable Court of 12/07/2018, the Court made a finding that the Plaintiff/ Respondent failed to establish a prima facie case, thereafter the Respondent embarked on a series of actions to deliberately and maliciously cause destruction in the suit property; That the Respondent cut down trees and reinforced the fence around the suit land in order to ensure he remains in possession of the suit in contravention of the Court ruling that he failed to establish legal ownership of the suit land. That he also committed acts of trespassing by cultivating the suit land. The applicant avers that the Respondent's actions are motivated by the realization that the Respondent may not win this case. Further the applicant is apprehensive that if the actions of the Respondent are not stopped he will continue to cause further damage on the suit land. That the Respondent has since lost interest in prosecuting the case, which the applicant assumes it is a delaying tactic to ultimately cause the case to be dismissed for want of prosecution. That the relatives of Ibrahim Mohamed are demanding the suit land plot no. 68 which was fraudulently acquired by the Plaintiff /Respondent. That in absence of plot no. 69, the Plaintiff has lost locus to institute this suit in its entirety.

3. The application is supported by the affidavit of the Applicant sworn on the 5th day of December 2018 who deposes that the 1st Defendant has discovered that the Plaintiff had fraudulently transferred Ibrahim Mohamed's plot No. Mjini 68 and was now pursuing a fraudulent claim on her plot no. Mjini 69. That it then follows that the Plaintiff has no legal claim over plot no. Mjini 69 and lacks locus standi to institute the entire suit. In addition, that the Plaintiff has not made any attempt to prosecute the case since the delivery of the ruling. That the nephew and Niece of the late Ibrahim Mohamed have come forward to claim their late uncle's plot in which case the Plaintiff has lost all legal grounds to institute this case. That the Plaintiff has failed to prove his ownership of the plots thus the entire suit is a mere fishing expedition and abuse of Court process. That the plots in dispute are part of the parcels of land earmarked by the government for a housing project as part of the big 4 agenda therefore if the case continues to drag the 1st Defendant stands to suffer irreparably because all plots with ongoing cases will be left out.

4. The Plaintiff/Respondent filed a Preliminary Objection to the application challenging the locus of the Applicant to make the application on behalf of the 1st Defendant alleging that he is not the Applicant himself nor his legal representative thus the application was therefore frivolous and vexatious and abuse of Court process. The Applicant filed the power of attorney dated 08/11/2017 and registered on 20/11/2017 in the name of Abdilahi Ali authorizing him to act on behalf of the 1st Defendant in the instant suit. This Preliminary Objection seems to have been abandoned upon the Applicant making this disclosure. I shall proceed on the premises that the same was withdrawn/abandoned.

5. The 2nd-4th Defendants/Respondents did not file any responses to the application, save the Plaintiff who filed written submissions.

6. With directions from the Court the application was disposed through written submissions. I have on record those of the 1st Defendant/Applicant and the Plaintiff/ Respondent's while the 2nd Defendant expressed its wish to adopt the submissions of the 1st Defendant.

7. The 1st Defendant / Applicant submissions are reiterating the contents of the supporting affidavit and save for case law, I need not repeat them here.

8. The Plaintiff / Respondent challenged the Applicant's application for lacking clarity and opines that the only issue that presents itself therein is whether the Plaintiff has locus standi to institute the present suit. That the Plaintiff's suit seeks to assert ownership right over plot no. 69 which he claims to be the rightful owner and that the plot was illegally subdivided without his knowledge by the Defendants. That the Plaintiff acquired the plot no. 69 in the year 1982 having purchased the same for value from Ibrahim Mohamed (deceased). That the Plaintiff's claim raises a bonafide question in that he claims ownership of the suit land and has supported his claim through a bundle of documents on record. That the 1st Defendant have premised their application on the fact that there are some new claimants to the suit land who he opines cannot defeat his entitlement to the suit land being the registered owner thereof. That the claim raises issues that ought to be litigated upon and has enjoined the Court to sustain the suit to allow the Plaintiff to ventilate his claim.

9. Does the Plaintiff have locus standi to institute the suit? It is common ground that the suit land initially belonged to Ibrahim Mohamed (deceased). What is contested is manner in which the suit land was transferred to the Plaintiff/ Respondent several years after the demise of the deceased in what appears to be without any grant of letters of administration. The applicant avers that no succession proceedings were ever done in respect to the estate of the deceased and claims that the succession cause alleged to have been relied upon for the transfer of the suit land to the Plaintiff was in relation to a different person being succession cause in respect to cause No. 148 of 2009 in the matter of the estate of Kiarie Karu alias Kiarie Karuu (deceased) and produced documentation in support. The Respondent asserts that he is the rightful owner of the suit land since 1982 having purchased it from Ibrahim Mohammed at a consideration and that the same has been fraudulently subdivided without his knowledge. In his plea he seeks a declaration that he is the rightful allottee of Plot 69.

10. Locus standi signifies the right of an individual to be heard in Court proceedings. To have locus a party must have sufficient interest in the matter. The Plaintiff Respondent's case as I understand is that he acquired the suit land from the previous owner through purchase. To that extent it is the finding of the Court that he has locus to pursue his claim. There are allegations surrounding the estate of the previous owner of the plot and whether the Plaintiff has taken out letters of grant of administration. It is the view of the Court that the contested issues on both sides be left to trial. It would be premature to dismiss the case at this stage.

11. Does the claim raise triable issues? The Plaintiff's claim is premised on his ownership rights over land parcel No. 68 and 69 which he claims to have purchased from the deceased and caused them to be registered in his name after an alleged succession of the estate of the deceased. I have perused the pleadings and find that the Plaintiff has a triable claim that should be allowed to proceed for trial on its merits. The notice of motion seeks to strike out the suit in its entirety, however as stated above the issues raised are in the nature of questions of fact which would conclusively be determined by calling evidence. The Court is enjoined in law to sustain the suit instead of dismissing it at a preliminarily stage.

12. Is the 1st Defendant entitled to restraining orders? The 1st Defendant also alleges that the Plaintiff has continued to carry out wasteful acts on the suit land. The three-fold requirement for grant of interlocutory orders as set in the case of **Giella vs. Cassman Brown** is that the applicant establishes a prima facie case, demonstrates irreparable loss and if the Court is in doubt the decision tilts on the balance of convenience. The Plaintiff did not respond to this claim. Though uncontroverted, I find that the 1st Defendant failed to establish a primafacie case and this prayer is dismissed.

13. The application is dismissed in its entirety with costs to the Plaintiff.

14. The Court directs the parties to set down the suit for hearing expeditiously.

15. It is so ordered.

DELIVERED, DATED & SIGNED AT MURANGA THIS 26TH DAY OF SEPTEMBER, 2019

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Plaintiff/Respondent: Absent

Abdillahi Ali for the 1st Defendant/Applicant

2nd – 4th Defendant – Absent

Kuiyaki and Njeri, Court Assistants