



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC CASE NO. 183 OF 2014

JOYCE WARUTUI GICHOYA1ST RESPONDENT/PLAINTIFF

TERESIA NGIMA GICHOYA2ND RESPONDENT/PLAINTIFF

VERSUS

LYDIA MICERE GICHOYA1ST APPLICANT/DEFENDANT

JAMES NYAGA2ND APPLICANT/DEFENDANT

RULING

This is in respect to the defendants/applicants Notice of Motion dated 29th October, 2014 seeking temporary injunctions with regard to parcel No. INOI/KAMONDO/1883. Although the application itself states in paragraph 2 that the orders sought are against the defendants, it is clear from the supporting affidavit of LYDIA MICHERE GICHOYA who is the 1st defendant/applicant herein that the defendants are in fact the applicants in the said Notice of Motion which is in fact drawn and filed by the defendants' advocate Lee Maina. Advocates should nonetheless be careful about the manner in which their pleadings are drawn. It would appear that the duty of drawing pleadings has been delegated to clerks.

Mr. Igati Mwai advocated entered appearance for the plaintiff on 29th October, 2014 and though served with the application on 6th November, 2014, there was no appearance either by him or the plaintiff. The application is un-opposed and when the matter came up on 13th November, Mr. Abubakar holding brief for Mr. Maina urged the Court to grant the orders as the same are not opposed.

I have considered the application, un-opposed as it is, I have also looked at the pleadings and other annexures in this dispute.

In the plaint, the plaintiff/respondents were seeking the main prayer of cancellation of the title deed in respect of land parcel No. INOI/KAMONDO/1883. It is the plaintiff's case that the said parcel of land i.e. INOI/KAMONDO/1883 (hereinafter the suit land) was previously registered in the names of one JOSEPH GICHOYA NGURE (deceased) who was husband to the plaintiffs and the 1st defendant but following his death in 1996, the said suit land was registered in the names of the two defendants. It is the plaintiffs' case that such registration was done fraudulently. The defendants' case is that in fact they were jointly registered as proprietors of the suit land following Embu Succession Cause No. 126 of 1996.

The principles for the grant of an interlocutory injunction are as follows:-

1. The applicant must show a prima facie case with a probability of success

2. An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages

3. If in doubt, the Court will decide such an application on the balance of convenience – *GIELLA VS CASSMAN BROWN & CO. LTD 1973 E.A. 358*

It is clear from the certificate of official search in respect to the suit land herein that the same is currently registered in the joint names of the defendants/applicants herein. Until that title is cancelled by the Court, the persons named therein are entitled to enjoy the rights and privileges that go with such registration. Allegations have been made that the defendants/applicants were registered as proprietors of the suit land through fraudulent means. That is a matter that will have to await the hearing of this suit when evidence will be led to establish the allegations of fraud. For now, the registration of the suit land in the names of the defendants/applicants is prima facie evidence that they lawfully own the suit land and they have therefore met the first principle set out in the *GIELLA* case (supra).

It is also the defendants/applicants case that if the injunction is not granted, they would suffer irreparable injury as the land is their inheritance and they are advanced in age and would not be in a position to acquire other property to live on. In my view, that averment adequately meets the test laid down in the *GIELLA* case on irreparable injury.

Having considered this application for interlocutory injunction in light of the legal principles governing the same, I am satisfied that the defendants/applicants have made out a case to warrant the grant of the orders sought in the Notice of Motion dated 24th October, 2014 which I hereby grant.

Costs in the cause.

B.N. OLAO

JUDGE

8TH DECEMBER, 2014

8/12/2014

Before

B.N. Olao – Judge

Mwangi – CC

Mr. Maina for Applicant – present

Mr. Mwai for Respondent – absent

COURT: Ruling delivered this 8th day of December, 2014 in open Court.

Mr. Maina for Applicant present

Mr. Mwai for Respondent absent.

B.N. OLAO

JUDGE

8TH DECEMBER, 2014



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