



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 195 OF 2021

SAJUN LIMITED.....PLAINTIFF/APPLICANT

VERSUS

ROY ROD KINYALE

PAPELLO INVESTMENTS LIMITED

THE REGISTRAR OF TITLES, MOMBASA

THE DIRECTOR OF SURVEYS

THE ATTORNEY GENERAL

THE COUNTY GOVERNMENT OF KILIFI

THE NATIONAL LAND COMMISSIONDEFENDANTS/RESPONDENTS

RULING

The application is dated 21st September 2021 and is brought under Sections 1A and 3A of the Civil Procedure Act and Order 40 Rule 1 of the Civil Procedure Rules, 2010 seeking the following orders;

1. This application be certified urgent and heard ex parte in the first instance.
2. Pending hearing and determination of this application, there be and is hereby issued an order of injunction restraining the Defendants either by themselves or through their agents, assigns, employees, officers, or any other person authorized by and/or acting for the Defendants from subdividing, selling, transferring, leasing, charging, accessing, occupying, trespassing on, using or in any other manner interfering with the property known as L.R. No. MN/111/3348.
3. Pending hearing and determination of this suit, there be and is hereby issued an order of injunction restraining the Defendants either by themselves or through their agents, assigns, employees, officers, or any other person authorized by and/or acting for the Defendants from subdividing, selling, transferring, leasing, charging, accessing, occupying, trespassing on, using or in any other manner interfering with the property known as L.R. No. MN/111/3348.
4. Costs of this application be borne by the Defendants jointly and severally.

It is based on the ground that the Plaintiff is the registered owner of the leasehold interest from the Republic of Kenya of the property known as L.R. No. MN/111/3348 for a term of 99 years with effect from 1st December 1996. The 1st and 2nd Defendants had processed a rival title for the suit property which the Plaintiff successfully challenged in Mombasa HCCC No. 289 OF 2009: Sajun Limited vs The Attorney General & 2 Others (hereinafter HCCC No. 289 of 2009”) and the same was cancelled. The Plaintiff has now discovered that despite their title having been cancelled in HCCC No. 289 of 2009, the 1st and 2nd Defendants with the approval of the 3rd, 4th and 6th Defendants have subdivided the suit property into three (3) new portions being L.R. No. MN/III/12214, MN/III/12215 and MN/III/12216. The 1st and 2nd Defendants have no right whatsoever to subdivide the suit property since their title thereto was cancelled by the court in HCCC No. 289 of 2009 and the 3rd, 4th and 6th Defendants have no mandate to approve the subdivision. The Plaintiff is apprehensive that if the

orders sought in this application are not granted, the Defendants will proceed to subdivide the suit property and are likely to charge, lease and/or sell the same to unsuspecting third parties and/or in any other way interfere with the suit property in a manner that is detrimental and prejudicial to the Plaintiff's title and interest therein. Despite having been restrained from interfering with the suit property in HCCC No. 289 of 2009, the Defendants have continued to interfere with the same by subdividing it warranting the intervention of this Honourable Court in the manner sought in this application. It is in the interest of justice that the Defendants be restrained from interfering with the suit property by allowing this application.

The 6th Defendant stated that, the Plaintiff herein is gravely mistaken as to the authenticity of the letter dated 15th January 2020 which allegedly emanated from the Chief Officer in charge of Lands, Energy, Physical Planning and Urban Development. That the letter dated 15th January 2020 herein purporting to approve subdivision of the suit property is a forgery and a counterfeit. That on 6th October 2021 the Directorate of Criminal Investigation in Coast Region wrote to inform them that their office was carrying out investigations into suspected forged stamps. That on 6th October 2021 the Directorate of Criminal Investigation in Coast Region wrote to inform us that their office was carrying out investigations into suspected forged stamps. A copy of the letter and specimen of the forged stamp is marked as "PW-1". That in the same letter from the Directorate of Criminal Investigation it was indicated that the stamps were recovered by police officers at a shop under the name Rohi Rubber Stamps located at Meru Road in Free Mark Building Mombasa. That on 6th October 2021 they wrote a reply to the letter from the Directorate of Criminal Investigation demonstrating that the letter dated 15th January 2020 was fake, fraudulent and in genuine. A copy of the letter and specimen of their original stamp and his signature is and marked as "PW-2". That the signature appearing on the letter is not his and that the letter purports to be issued under the Physical Planning Act which in 2020 was no longer operational as it had been repealed by the Physical and Land Use Planning Act of 2019. That any document prepared by his office after the 5th August 2019 was issued under the Physical and Land Use Planning Act of 2019. That the stamp used in the letter dated 15th January 2020 is fake as is the reference number CG/SUB/KLS/10/2020 appearing on the face of the letter. That the process of subdivision of property begins when an applicant engages a registered physical planner to draw the subdivision plan which is then submitted to the Housing, Physical Planning and Urban Development Department of Kilifi County for consideration. That approval is granted to an applicant upon receipt of written comments from a registered planner and surveyor and thereafter submitted to the Director of Surveys and Land Registrar for processing of titles.

This court has considered the application and submissions therein. In the case of *Giella vs Cassman Brown & Co Ltd* (1973) EA 358 the principals for granting an injunction are stated as follows:

1. First an applicant must show a prima facie case with a high 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 the Court is in doubt, it will decide an application on the balance of convenience.

It is a finding of fact that the Applicant herein does not dispute that, the Plaintiff is the registered owner of the leasehold interest from the Republic of Kenya of the property known as L.R. No. MN/111/3348 for a term of 99 years with effect from 1st December 1996. The 1st and 2nd Defendants had processed a rival title for the suit property which the Plaintiff successfully challenged in Mombasa HCCC No. 289 OF 2009: *Sajun Limited vs The Attorney General & 2 Others* (hereinafter HCCC No. 289 of 2009") and the same was cancelled. That the 1st and 2nd Defendants with the approval of the 3rd, 4th and 6th Defendants have subdivided the suit property into three (3) new portions being L.R. No. MN/III/12214, MN/III/12215 and MN/III/12216. That the letter dated 15th January 2020 herein purporting to approve subdivision of the suit property is a forgery and a counterfeit. It has come out in evidence that the Directorate of Criminal Investigation in Coast Region were investigating the matter. That the said letter being a forgery as confirmed by the 6th defendant, I find that the Plaintiff/Applicant has not established a prima facie case with a high probability of success. I find this application is not merited and I dismiss it. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 23RD DAY OF FEBRUARY, 2022

N.A. MATHEKA

JUDGE