

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC. CASE NO. 1171 OF 2013

ALKA ROSHANLAL HANSPAL.....PLAINTIFF/APPLICANT
(As administrator Ad Litem in the Estate of KULTAR SINGH HANSPAL (Deceased))

VERSUS

ESTHER MUTHONI PASSARIS.....DEFENDANT/RESPONDENT

RULING

Coming up before me for determination is the Defendant/Applicant's Notice of Motion dated 12th November 2013 seeking for the following orders:

- a. Spent
- b. That this honourable court do issue a temporary injunction restraining the Plaintiff whether by herself, her agents, servants, employees or whosoever from trespassing into, selling, transferring, mortgaging, charging, leasing, alienating or in any way dealing or any way interfering with the parcel of land known as LR. No. 7741/75 Kitisuru (hereinafter referred to as the "suit property") pending the inter-partes hearing of this Application.
- c. That this honourable court do issue a temporary injunction restraining the Plaintiff whether by herself, her agents, servants, employees or whosoever from trespassing into, selling, transferring, mortgaging, charging, leasing, alienating or in any way dealing or any way interfering with the suit property pending the hearing of this suit.
- d. That the Plaintiff/Respondent herein be restrained by herself, her servants, agents and assigns or any firm of auctioneers from invading, evicting levying distress or in any way interfering with the Defendant/Applicant's quiet possession of the suit property pending the hearing and determination of this Application.
- e. That the Plaintiff/Respondent herein be restrained by herself, her servants, agents and assigns or any firm of auctioneers from invading, evicting levying distress or in any way interfering with the Defendant/Applicant's quiet possession of the suit property pending the hearing and determination of this suit.
- f. That this honourable court do issue an order prohibiting the registration of any transaction against the title to the suit property pending the hearing and determination of this suit.
- g. That the Plaintiff/Respondent be detained in prison for a period of six (6) months or as the court may direct for being in contempt of this Honourable Court's Order issued on 16th April 2011.
- h. That the Plaintiff/Respondent's Advocate on record J. Harrison Kinyanjui be detained in prison for a period of six (6) months or as the court may direct for aiding and abetting the Plaintiff's disobedience of the honourable Court's Order issued on 16th April 2011.
- i. That in the alternative, the Plaintiff/Respondent's and her Advocate J. Harrison Kinyanjui's property be attached and sold for being in contempt of this honourable Court's order issued on 16th April 2011 by Honourable Lady Justice Khaminwa and for resorting to self-help ends and in essence pre-empting the decision of this honorable court in regard to the Plaintiff/Respondent's application dated 12th September

2013.

- j. That the Defendant be granted leave and permission to erect and install a temporary wall and electric fence around the suit property pending the hearing and determination of this suit.
- k. That costs of this Application be awarded to the Defendant/Applicant.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of the Defendant/Applicant sworn on 12th November 2013 in which she averred that the Plaintiff/Respondent wrote to the Nairobi County Governor through her advocates alleging that the Defendant has erected illegal structures on the suit property and demanding that the County office do bring down the said structure failing which she threatened to carry out the demolition herself if the same was not brought down by close of business on 11th October 2013. She further averred that true to her threat, on 11th October 2013, the Plaintiff/Respondent while accompanied by hired hooligans brought down the gate at the entrance of the suit property, entered into the suit property and caused wanton damage and destruction thereon. She clarified that the illegal structure referred to was a temporary wall she put up after the Plaintiff brought down the perimeter fence that separated the suit property and the guest house where the Plaintiff resides. She confirmed having sought and obtained the consent of the Nairobi City County before erecting the said temporary wall. She further stated that the Plaintiff has fraudulently transferred the suit property into her name and obtained a provisional title in an attempt to defeat her claim for specific performance. She further averred that the Plaintiff/Respondent's actions were in blatant contempt of this honorable court's orders issued on 16th April 2011 and should be accordingly imprisoned for a period of six (6) months or in the alternative the court should order that her goods be attached and sold. She further averred that the Plaintiff/Respondent's advocate J. Harrison Kinyanjui is in contempt of this honorable court by aiding and abetting the Plaintiff/Respondent's actions which were in blatant disregard of this honorable court's orders issued on 16th April 2011 and for enabling the Plaintiff/Respondent to resort to self-help ends and in essence pre-empting this honorable court's decision in the application dated 12th September 2013 and therefore he should accordingly be imprisoned for a period of six (6) months or in the alternative the court should order that his goods be attached and sold.

The Application is contested. The Plaintiff/Respondent filed her Replying Affidavit sworn on 2nd December 2013 in which she averred that she lives on a separate part of the suit property together with her 80 year old mother and that granting the Defendant's application shall result in their being evicted out of her land. She further stated that the Defendant is illegally altering the structure of the suit property in the guise of security reasons but that the truth is that the Defendant did not obtain a court order sanctioning that action, the Defendant never informed her and she did not also obtain any authority from the County Government to erect the said structure. She further stated that she is entitled under **section 65(2)(a) of the Land Act, 2012** to inspect the suit property. She further averred that she did not hire any hooligans to cause wanton damage to the suit property as alleged or at all. As for the transfer of the suit property to her name, the Plaintiff/Respondent stated that her deceased husband had gifted to her the suit property and that she joined in this suit as proprietor of the suit property intent on seeing the justice of the matter. She further stated that her advocate J. Harrison Kinyanjui is not a party to this suit and as such cannot have orders issued herein directed against him.

I will address this Application summarily primarily because it is quite clear to me that the full and final determination of this suit shall go a long way in addressing the issues arising between the litigants herein in the pendency of this suit. I have written no less than two rulings in this matter already and am now faced with this Application which is really a contempt application. There is already subsisting in this matter an injunction in favour of the Defendant effectively preserving the suit property. It emerges quite clearly to me that the Defendant/Applicant has sought to have the Plaintiff/Respondent and her Advocate committed to jail or their goods attached for contempt of the injunction subsisting herein. I will not grant it for the reason that the Defendant has on her own admission stated that she has proceeded to erect structures on the suit property without the sanction of the court, the County Government and the registered proprietor of the suit property who is the Plaintiff. Further, I stand unconvinced that the Plaintiff engaged in any of the acts that the Defendant alleges. I will therefore not grant this Application and proceed to dismiss it with no order as to costs.

I also direct the Plaintiff to take the necessary steps to fix this suit for hearing at the earliest possible moment for the sake of having this long standing dispute settled once and for all.

DELIVERED AND SIGNED AT NAIROBI THIS 24TH DAY OF APRIL 2015.

**MARY
JUDGE**

M.

GITUMBI