



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

ELC CIVIL SUIT NO 1310 OF 2013

KASARANI SETTLEMENT LIMITED.....PLAINTIFF/APPLICANT

VERSUS

MARGARET WANGECHI WACHIRA.....DEFENDANT/RESPONDENT

RULING

The matter for consideration is the Plaintiff's/Applicant Notice of Motion dated **31st October 2013** brought under **order 51** of the **Civil Procedure Rules and Section 1A &3A of the Civil Procedure Act** seeking for orders that;-

- i. ***this honourable court be pleased to issue a temporary injunction restraining the Respondent, his servants and or agents from unlawfully trespassing and / or encroaching or threatening/ interfering/tampering in any manner whatsoever with the applicant quiet occupation and enjoyment of suit premises to wit plot No 165 LR No. 14235 Nairobi, Kasarani.***
- ii. ***That the O.C.S Kasarani police do assist/oversee compliance/ adherence of the order thereof.***
- iii. ***That costs be provided for.***

This application is premised on the grounds stated on the face of the application and the supporting affidavit of **George Gathecha Kinyanjui** a Director of the Plaintiff Limited Company. He averred that the plaintiff is the rightful owner of the suit property having acquired the said property by way of purchase from the original grantee **Research and Development Forum for Science Led Development in Africa**. That sometimes in 2013 the defendant encroached and trespassed onto the suit property and commenced construction of a perimeter wall without the plaintiff's authority. That the plaintiff stands to suffer irreparable loss and damage if the defendant is not restrained. He therefore urges this court to allow the application.

This application is opposed. The defendant filed her replying affidavit where she deponed that she is the rightful owner of the suit property having purchased it from **KANU** Kahawa ward youth group. She further stated that the whole of **LR No 14235**, was earmarked by the Government of Kenya to settle the landless and to achieve an orderly manner of resettlement, Kasarani Resettlement Project was formed. She averred that she paid **Ksh 5,000/=** to savanna Land Surveyors as survey fees. She was issued with an ownership certificate by Kasarani Resettlement Project as proof of ownership and has been in peaceful occupation. She also explained that the members of Kasarani Resettlement Scheme resolved to incorporate Kasarani Settlement Limited because all that piece of land **LR No 14235** was to be subdivided and allocated to members where the directors were made the trustees and were accountable to all members. That the members paid monies towards the processing of title deeds but the plaintiff never processes any title deed for her plot even after paying **Ksh 235,000/=** as required. She averred that on

20th August 2013 a Director of the plaintiff company led a group of persons in demolishing the perimeter wall where she suffered damages of Ksh **150,000/=** and was forced to report the incident at Kasarani Police station. Then **George Gatheca** was summoned but was unable to justify his claim of ownership and was ordered by the police to return the properties they had taken from her but he refused to honour the police directive and instead filed this suit. She urges the court not to allow the application.

The applicant filed a further affidavit which has been considered by the court. Parties canvassed this application by way of written submissions. The plaintiff reiterated the contents of the affidavits and cited Article 40 of the Constitution on the right to own property. The defendant filed her written submissions on 17th June 2014. The defendant relied on the case of **Giella –vs- - Cassman Brown Limited**. She also reiterated the contents of her replying affidavit

The principles governing the grant of an injunction were settled by the decision in **Giella –vs- Cassman Brown Limited [1973] EA 358**, where the Court stated that;-

- i. ***The applicant has to show that he has a prima facie case with a probability of success,***
- ii. ***Secondly he has to demonstrate that if the application is not granted he is likely to suffer such loss or injury that damages may not appropriately compensate and***
- iii. ***if the court is in doubt, it will decide the matter on the balance of convenience.***

In considering this application my task is to make a finding on whether the plaintiff has shown a prima facie case with chances of success. The Plaintiff has demonstrated that it is the registered owner of the suit property and has demonstrated so by showing in its supporting affidavit the ownership certificate **No 0135** and title to the suit property. However the defendant has also claimed ownership to the suit property and explained that she purchased it from **KANU Kahawa ward youth group** who had been allotted plot **No 165**. She has also exhibited evidence of ownership of the suit property by showing in her relying affidavit ownership certificate that had been given to **KANU Kahawa Youth Group** by Kasarani resettlement project, the agreement of sale between the defendant and one George Muthee Kinungi, ownership certificate given to the defendant by Kasarani Resettlement Project on plot No 165, minutes to a meeting held at Sports View hotel where the members resolved to incorporate the Kasarani Resettlement Project to a company limited and various payment receipts of monies she paid to the advocates of the plaintiff and the plaintiff itself.

From the foregoing evidence it is apparent that both parties herein have evidence of ownership of the suit property. The defendant has explained in her replying affidavit how the plaintiff company was incorporated from a resettlement project in which she was a member by virtue of buying the suit property from the **KANU Kahawa Ward Youth Group** to the incorporation of the company in 2007. I find that the issue of ownership in this instance cannot be determined at this interlocutory stage and the only way to ascertain ownership of the suit property is by having parties presenting their evidence and witnesses in court in an appropriate hearing.

On whether the plaintiff has suffered irreparable loss, my finding is that the plaintiff has not shown the court how it has suffered damages. In any case the Defendant, has lamented that the plaintiff with the help of other people brought down the perimeter wall a fact that was reported at Kasarani Police station. This contention has not been rebutted by the plaintiff.

Both the plaintiff and defendant acknowledge that the defendant had been on the suit property. Since the Defendant is in occupation, the Court finds that the balance of convenience tilts in favour of the defendant, having purchased it from **KANU, Kahawa Ward Youth Group**.

Having now considered the Notice of Motion herein dated **31st October 2013**, the pleadings in general, the annexure thereto and the written submissions, the Court finds that the best remedy herein is to maintain the Status Quo. Consequently, the Court orders that Status Quo be maintained in the following terms.

- a. *The defendant shall remain on the suit property pending the hearing and determination of this suit and the plaintiff should not interfere with the defendant's occupation.*
- b. *The plaintiff and defendant are restrained from dealing with the suit property in a manner that will change the status of the suit property.*
- c. *Costs shall be in the cause.*

Parties to ensure that the matter is expeditiously heard within the next 12 months to resolve the issues at hand.

It is so ordered.

Dated, Signed and Delivered this **22nd** day of **May, 2015**

L.GACHERU

JUDGE

In the Presence of:-

M/s Nzioki holding brief for Bosire for the Plaintiff/Applicant

Mr Hassan holding brief for M/s Ndata for the Defendant/Respondent

Court Clerk: Nyangweso

Court:

Ruling read in open Court in the presence of the above counsels.

L.GACHERU

JUDGE

22/5/2015