



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC NO. 1406 OF 2013

REBECAH NJERI KARIUKI.....PLAINTIFF

VERSUS

ELIZABETH NG'ENDO.....1ST DEFENDANT

REGISTRAR OF LANDS, THIKA.....2ND DEFENDANT

RULING

Following an application dated **18th November 2013**, filed by the Plaintiff, this Court (Gitumbi J.) issued temporary orders against the Defendants restraining them from sub-dividing, excavating, trespassing, gifting, leasing, transferring, disposing off or in any other way dealing with the suit land known as **Ruiru East/Juja East Block 2/4243**. Secondly, that the 2nd Defendant was compelled to supply all information including the documents relating to all the transactions carried out over the suit property forthwith. It is these orders that the Plaintiff seeks this court to confirm pending the hearing and determination of the suit.

The application is premised on grounds that the Plaintiff is the registered owner of the suit property and therefore has a strong case with overwhelming chances of success. The Plaintiff avers that the 1st Defendant has fraudulently acquired title in her name over the property and that she is apprehensive that the 1st Defendant may dispose off the same or deal with it in a manner that would be prejudicial to her. With respect to the 2nd Defendant, the Plaintiff avers that the said office has declined to supply her with information relating to the suit property, despite her demands in the guise that the records relating to her property are unavailable in the registry. The Plaintiff avers that she is likely to suffer irreparable loss if the orders sought are not granted.

The application is supported by an affidavit sworn by the Plaintiff wherein she deposed that she was a member of Juja Farm Company Limited, a land buying company, which in 1980, allocated her the suit property measuring 1.3 hectares in accordance with her share. Subsequently in 1989, she was issued with a title deed to the property. It was her disposition that sometime in October 2013, she learnt that the 1st Defendant has trespassed onto her property and erected fresh beacons on top of the existing beacons. The Plaintiff deposed that whilst the 1st Defendant has title to the same property, her records at the Lands Registry in Thika are untraceable.

The 1st Defendant filed a Replying Affidavit sworn on **18th December 2013**. She deposed that her parents purchased the property on her behalf after undertaking due diligence including tracing ownership to

Samuel Kageni Irungu who sold them the property. The 1st Defendant deposed that she was aware that **Samuel Kageni Irungu** had been in possession of the property since **1990** having been allocated the plot by Juja Farm in **1976** limited and therefore the Plaintiff is estopped from making claims over the property.

The 1st Defendant filed a Further Replying Affidavit sworn on 14th October 2014, wherein where she annexed a certified copy of the green card showing that **Samuel Kageni Irungu** was the first proprietor and was issued with title on **15th January 2013**. The green card also showed that title was issued to her on **20th July 2011** upon transfer from Irungu. The 1st Defendant also annexed a copy of an official search showing that she is the registered owner of the property as at **24th September 2014**.

The application was canvassed by way of written submissions to which I have carefully read and considered the authorities referred to by the Counsels. From the supporting documents annexed to the parties' affidavits, it is evident both parties have titles in their names in respect to the suit property. The Plaintiff's title was issued in 1989 whereas the 1st Defendant's predecessor title was issued in 2003. The Plaintiff avers that she is unable to undertake a search since her records at the Lands registry cannot be found. This averment has not been confirmed as the 2nd Defendant did not respond to the application. Nevertheless, the Plaintiff has title just as the 1st Defendant does. **Section 26** of the **Registered Land Act** provides that the **Certificate of Title shall be held as conclusive evidence of proprietorship**. Therefore, unless challenged on grounds outlined under Section 26(1) (a) or (b), title will be taken as prima facie evidence that the person named as proprietor is the absolute indefeasible owner.

It follows therefore that this court must adjudicate over the root of the two titles presented by the parties. In the case of **Munyu Maina v Hiram Gathiha Maina, Civil Appeal number 239 of 2009**, the Court of Appeal held as follows:

'We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register'.

This can only be done upon trial when each party will be afforded an opportunity to give evidence and the veracity of that evidence tested on cross-examination.

Having now considered the pleadings in totality the written submissions and the cited authorities, the Court finds that the logical thing to do as this juncture is to maintain the status quo pending the hearing and determination of the case. The status quo shall be to the effect that no party shall sub-divide, excavate, trespass, gift, lease, transfer, and dispose off or in any other way deal with the suit land known as **Ruiru East/Juja East Block 2/4243**, pending the hearing and determination of the suit or until further orders of this court. The costs of the application shall be in the cause.

It is so ordered.

Dated, Signed and Delivered this **19th day of May, 2015**

It is so ordered.

L.GACHERU

JUDGE

In the Presence of:-

Mr K N Mwangi for the Plaintiff/Applicant

Mr Njege for the 1st Defendant/Respondent

None appearance for the 2nd Defendnt

Hilda :Court Clerk

Court:

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

L.GACHERU

JUDGE