



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
MILIMANI LAW COURTS
ELC NO. 837 OF 2014
ENOCENT GUGUYU MUDINDI.....PLAINTIFF
VERSUS
FRANCIS WANJOHI.....DEFENDANT
RULING

The Plaintiff filed an application dated **13th June 2014** seeking orders that:

1. *Spent*
2. *Spent*
3. *A permanent and/or mandatory injunction be issued restraining the Defendant, his servants and/or agents from trespassing, encroaching, developing, selling, transferrin and/or interfering in any manner whatsoever with the Plaintiff's property known as Plot No. 2093 being part of L.R. No. 8479/Njiru pending the hearing and determination of the suit.*
4. *An eviction order be issued evicting the Defendant from the suit property pending the hearing and determination of the suit.*
5. *An order be issued compelling the OCPD Kayole Division to enforce the orders of the Court.*
6. *The Court be pleased to make any further orders and issue an other relief it may deem just to grant in the interest of justice.*
7. *Costs of the application be provided for.*

The application is premised on grounds outlined in the application and supported by an affidavit sworn by the Plaintiff. Therein he deposes that he is the registered owner of the suit plot having purchased it from **John Mbugua Mungai** at a consideration of **Kshs. 155,000/-**. It was his deposition that the Defendant trespassed onto his property in 2009 and has continued to illegally occupy the plot and is undertaking the development of a permanent structure thereon to his detriment. Further, that effort to involve the Provincial Administration has not borne fruit as the Defendant failed to honour summons to attend Mwiki Chief's office to settle the issue. The Plaintiff deposed that he has been paying land rates and rent for the plot since the purchase but that he has since not enjoyed quiet enjoyment of the same.

The Defendant opposed the application through a Replying Affidavit sworn on 6th October 2014. He deposed that the plot in issue is subject of another matter before the Court, HCCC No. 409/2006 which is still pending but there are injunction orders restraining Mutirithia wa Andu Company Ltd from interfering with the occupation of land including him. Therefore, that if the company transferred the property to the Plaintiff in 2009, it was done in blatant contempt of the Court Order. Further, that if the Court issues the orders sought in the application, it shall be in conflict with the orders of HCCC No. 409/2006. The Defendant deposed that as admitted by the Plaintiff, he has been in possession of the suit plot and therefore the orders of injunction should wait until the hearing and determination of the main suit.

The Plaintiff swore a Further Affidavit on **20th November 2014**, wherein he deposed that his **Plot No. 2093** is allocated **L.R. No. Nairobi/Block 144/2035**. The Plot changed ownership from **Mutirithia wa Andu Company Ltd** to **John Mbugua Mungai** in the year 2000 and subsequently to him on **26th April 2007** when he made the final payment of the purchase price. It was his deposition that the Defendant is not among the **47 Ruaraka Squatters** in **HCC NO.409/2006** and is therefore using the orders to illegally benefit him. Further, that he encroached onto the suit plot, two years after the injunction orders were issued. The Plaintiff stated that there was in fact another suit **HCCC No. 676/2003** but however, the suit plot, **L.R. No. Nairobi/Block 144/2035** is not listed as among the properties in the Court Order of **7th July 2003**.

The application was canvassed by way of written submissions. Counsel for the Plaintiff submitted that the Plaintiff had established ownership of the suit plot by availing a Certificate of Allocation issued on **9th January 2012**, copies of the sale agreements between him and the previous owner, and a letter from from **Mutirithia wa Andu Company Ltd** addressed to **OCPD Kayole Police Station** dated **15th July 2009** confirming that **John Mbugua Mungai** was the lawful owner of the suit plot. Thus, having demonstrated ownership, the Plaintiff has established a prima facie case with chances of success. It was submitted that the Plaintiff would suffer irreparable loss and that even though the value of the suit property can be ascertained; damages would not always be a suitable remedy. Counsel submitted further that an order for **status quo** would inconvenience the Plaintiff as it would enable the Defendant to continue with the encroachment whereas the latter has not proved legal title over the property.

In respect to the prayer for mandatory injunction, counsel submitted that the Plaintiff had established ownership whereas the Defendant had not showed legal right either through purchase, adverse possession or any other legal means of acquisition available in law or equity. Thus, the Plaintiff was entitled to the order so as to bring the matter to an end. In respect to **HCCC No. 409 of 2006**, counsel submitted that the Defendant was not amongst the 47 applicants therein and further, he encroached onto the property in **2009** after the orders had already been issued and therefore had no right to benefit from the said orders.

On behalf of the Defendant, counsel submitted that the Plaintiff had failed to establish a prima facie case as the documents relied on were contradictory hence unreliable on the basis that the letter of allotment dated **9th January 2012** is for **Plot No. 2093** whereas the approved sub-division scheme is for a Plot known as **Nairobi Block 144/2035**. Secondly, that though the Plaintiff claims to have completed the purchase price in **2007**, the holding Company as at **2009** indicated that the property belonged to **John Mbugua Mungai**. It was submitted that the entire suit property **L.R. No. 8479** is subject of litigation in **409 of 2006** in which the Defendant is amongst the 43 Plaintiffs and that there exists an order in favour of the Plaintiffs therein. As to whether the Plaintiff can be adequately compensated by damages, counsel submitted that the value of the property was ascertainable and that he had neither lived nor developed the same, thus, an award of damages would suffice. Counsel urged the court to maintain the status quo until the suit is heard.

The dispute between the parties is the ownership of **Plot 2093**, which is part of **L.R. No. 8479/Njiru**, owned by **Mutirithia wa Andu**. The Plaintiff has shown that he purchased the property from one **Mbugua Mungai** and paid full purchase price. From the documents relied on by the Plaintiff, the company did recognize the ownership of the Plaintiff's predecessor and subsequently the Plaintiff by issuing Certificates of Plot Allocation in their favour in respect of **Plot No. 2093**. The Plaintiff also referred to a Sub-division Scheme Approval by the National Land Commission which notified the

Plaintiff that a lease in favour of **Nairobi/Block 144/2035**, will be prepared as soon as he meets the special conditions outlined thereunder. The Plaintiff has not shown whether he has complied with these requirements and there is no Certificate of Lease annexed. Nevertheless, the Certificate of Plot Allocation suffices to show that the Plaintiff has demonstrated that he has an interest over the disputed plot.

The Defendant, on his part, asserts to have been in possession of the property. More importantly, he avers that **L.R. No. 8479/Njiru**, which includes the disputed plot is subject of a suit **HCCC No. 409 of 2006**. The Defendant annexed the Originating Summons of the said matter which reveals that it is a case of adverse possession. There is also an order issued on **18th October 2007**, restraining the Defendant (**Mutirithia wa Andu**) from interfering with the Applicants' possession pending the determination of the suit. Whilst the Plaintiff does not deny the pendency of the other suits, the Plaintiff contends that first **Plot No. 2093**, had already been transferred to him in **April 2007** before the order in **HCCC No. 409 of 2006**, was issued in **October 2007** and secondly, the Defendant has not exhibited that he is party to the said suit, and he cannot therefore benefit from an order emanating therefrom.

As stated hereinabove, I find that the Plaintiff has exhibited ownership interest over **Plot No. 2093**. Having said that, however, I do note that there is a matter of adverse possession over **L.R. No. 8479/Njiru** which comprises of the plot in dispute herein. The existence of the adverse possession case, notwithstanding, the Defendant has not exhibited that he is party to the said suit and I agree with the Plaintiff's submission that he cannot ride on other persons' shoulders. In the circumstances, I will enter the following orders:

- 1. The Defendant is hereby restrained from developing, selling, transferring or in any manner alienating with Plot No. 2093 pending the hearing and determination of the suit or further orders of this court.*
- 2. With respect to the Mandatory Injunction, this court shall refrain from giving such an order in view of the pendency of HCCC No. 409 of 2006.*
- 3. The Deputy Registrar of this Court is directed to furnish the Court with HCCC No. 409 of 2006 (OS) for perusal by the Court to enable the Court give directions as to the disposal of this suit.*
- 4. Costs of the application shall be in the cause.*

Dated, Signed and Delivered this 12th day of June 2015

L.GACHERU

JUDGE

In the Presence of:-

.....For the Plaintiff/Applicant

.....For the Defendant/Respondent

Hilda: Court Clerk

L.GACHERU

JUDGE