



REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT AT NAIROBI

ELC SUIT NO. 247 OF 2011

KENT GALVAN.....PLAINTIFF

VERSUS

JONATHAN GRANTHAM.....1ST DEFENDANT

JERRY DAVID.....2ND DEFENDANT

SECURITY GUARD SERVICES LIMITED.....3RD DEFENDANT

AND

PATEL RAJVI.....APPLICANT

LALJI DEVRAJ.....APPLICANT

RULING

The Application

The Applicants filed an application in court by way of a Notice of Motion dated 20th July 2012. They are seeking various orders, namely to be enjoined in this suit, a temporary prohibitory injunction restraining the Defendants from trespassing, entering and/or demolishing the house in L.R. No. 11392/2 Spring Valley (hereinafter referred to as the suit property), or in any other manner interfering with the said property pending the hearing and determination of this suit, and for consolidation of this suit with HCCC N0 889 of 2010.

The Applicants claim that they are purchasers for value of the suit property, and that the Defendants have stolen the said property from them, and destroyed it in the purported execution of an invalid order, and intend to demolish the house which is on the suit property. The 1st Applicant in a supporting affidavit sworn on 20th July 2012 stated that the Interested Parties bought the suit property from the Plaintiff in May 2011 for Kshs 40 million, and he attached the sale agreement. He also gave a detailed account of the Defendant's activities in relation to the suit property, which he stated they use for storage of construction material.

The Response

The Defendants opposed the Applicants' application in Grounds of Opposition dated 27th July 2012 and in a replying affidavit sworn by the 1st Defendant on 9th August 2012. The Defendants stated that the

Applicants have no locus in this matter, and that their application should be dismissed as they have no registered legal or equitable interest in the suit property. The Defendants further stated that the suit property is held in trust by the 1st and 2nd Defendants as Trustees and Administrators of the estate of Paul Stoffregen (Deceased) who is the registered proprietor of the property. The Defendant attached copies of the title to the suit property, of the Grant of Probate and Certificate of Confirmation of Grant, and of the order of the court appointing them as Trustees of the estate of the deceased Paul Brindstrup Stoffregen and which granted them the capacity to sell and administer the proceeds of the sale of the suit property.

The Defendants averred that there has never been any agreement of sale, transfer or any other transaction for conveyance of the suit property between the Plaintiff and the late Paul Stoffregen as the registered owner of the suit property, or with the 1st and 2nd Defendants as the bona fide Trustees and Administrators of the estate of the late Paul Stoffregen (deceased). Further, that there has never been any agreement of sale or other transaction for conveyance of the suit property entered between the Applicants and the late Paul Stoffregen as the registered owner of the suit property or with the 1st and 2nd Defendants as the bona fide Trustees and Administrators of the estate of the late Paul Stoffregen (deceased).

The Defendants further stated that the Applicants had also not disclosed that they have lodged a criminal complaint at Muthaiga Police Station in respect of the purported sale of the suit property, and that the Plaintiff has since been arrested and charged with, inter alia, obtaining money by false pretences in **Nairobi Criminal Case No. 1100 of 2011, Republic –Vs- Kent Galvan & Another**, which case is still proceeding and the 1st Applicant is the complainant and a witness. The Defendants attached a copy of the Charge Sheet in the said criminal case.

The Defendants also stated that they instituted HCCC No. 889 of 2010 against another trespasser who had illegally entered into the suit property, and that this court ordered, *inter alia* that the Defendants be allowed to re-enter the premises being Land Reference No. 11392/2 and the assistance of Spring Valley Police Station be provided, if necessary. The Defendants attached the court order which they stated is still in force and by virtue thereof HCCC No. 889 of 2010 has been disposed of and is thus not relevant to this case.

Lastly, the Defendants denied any knowledge of forged court orders used in this suit, and also stated that it is the Applicants who are the trespassers on suit property, and that it is their agents accompanied by hooligans who occasionally invade the suit property causing destruction which is greatly devaluing the property.

The Submissions

The Parties were directed to file written submissions, and the Applicants' counsel in submissions dated 12th September 2012 reiterated the arguments made in their pleadings, and argued that as purchasers for value of the suit property they had an legal interest in the suit property, and that the fraud by the seller of the property had not been determined conclusively by the court. He submitted that the *status quo* should be maintained pending the determination of the suit, and relied on the decision in **Ashford Kangethe vs Chaka Limed & 2 Others** (2012) eKLR where the applicant who was in possession of the suit property was found to have an interest therein, and to be a necessary party to the suit.

The Defendants' counsel argued in submissions dated 17th September 2013 that the Applicants were not *bona fide* purchasers for value of the suit property as they had not brought any evidence of the consideration paid; as the seller had no capacity to sell the property as he was not the registered proprietor at the time of sale; and as the Applicants had not brought any evidence to show their independent investigation of the title to establish the ownership of the suit property. The counsel relied on the decisions in **Ndege Wholesalers Limited v Chikoo Investments Ltd and Another, (2006) e KLR** and **Chandrakant Premchand Dodhia v Francis Ngatia Theuri and Others Nairobi High Court Civil Case 2894 of 1993** in this respect.

The counsel further submitted that the Land Registration Act under section 26 provided for indefeasibility

of the 1st Defendant's title, and the alleged forged court orders did not touch on the legitimacy of the title. Further, that it was the Applicants who were the victims of fraud, and that they had sought redress in **Criminal Case No 1100 of 2011 - R vs Kent Galvin & Another**. It was also argued that the Applicants had not established their interest in being enjoined in the suit. Further, that the Applicants are also not entitled to the injunction orders sought as they are not in occupation of the suit property, and had failed to disclose that they were aware that the Plaintiff was not the registered owner of the suit property and that they had instituted criminal proceedings against him.

Lastly, the counsel for the Defendants argued that there are no valid grounds for consolidating this suit with that in HCCC 889 of 2010, since the suit in HCCC 889 of 2010 had been disposed of and had no relevance to the current suit. Further, that the 1st Defendant in this suit is a Plaintiff in HCCC 889 of 2010, and the claim in HCCC 889 of 2010 cannot be treated as a counterclaim in this case. It was also argued that the parties in HCCC 889 of 2010 are not similar to the parties in this suit. The counsel relied on the dictum to this effect in **Nyati Security Guards Services Ltd vs Municipal Council of Mombasa in Mombasa, HCCC No 994 of 1994**.

The Determination

I have carefully read and considered the pleadings and arguments made by the parties herein. The issues for determination are firstly, whether the Applicants should be joined as parties to this suit; secondly whether the Applicants should be granted the temporary injunction sought; and lastly whether this suit should be consolidated with that in HCCC No. 889 of 2010.

On the first issue of joinder of the Applicants, under Order 1 Rule 10 of the Civil Procedure Rules this court can at any stage of court proceedings add parties whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit. I find in this regard that to the extent that the Applicants allege to have purchased the suit property herein from the Plaintiff, they are necessary parties in this suit for the court to be able to assess and determine all the issues in dispute relating to the suit property.

On the second issue as to the grant of the temporary injunction, the requirements are stated in **Giella vs Cassman Brown & Co Ltd, (1973) EA 358**, which are that the applicant must establish a *prima facie* case, and that he or she would suffer irreparable loss which may not be compensated by an award of damages. If the Court finds that the two requirements are not satisfied, it may decide an application on the balance of convenience.

The first question I must therefore answer is whether the Applicants have established a *prima facie* case. The Applicants have provided evidence of a sale agreement dated 6th May 2011 entered into with the Plaintiff with respect to the suit property. They however did not provide any evidence of the Plaintiff's title to the said property.

The Defendants have on the other hand provided evidence of a title showing that the suit property was registered in the name of Paul Brindstrup Stoffregen (since deceased) on 3/7/2006, and evidence of court orders making them the administrators and trustees of the estate of the deceased. In the circumstances I find that the Applicants have not established a *prima facie* case, and are not entitled to the injunction orders sought. In addition I find that this is not an appropriate case for the grant of *status quo* orders, in light of the criminal proceedings against the Plaintiff with respect to the sale agreement entered into with the Applicants, which is not disputed and was not disclosed by the said Applicants.

Lastly, on the issue of the consolidation of this suit with that in HCCC No. 889 of 2010, I have not been able to locate the court file for HCCC No. 889 of 2010 for perusal, and cannot therefore make any orders on the issue. However, no prejudice will be caused to the Applicants in this regard as such orders if merited can be made of the court's own motion once the said file is located.

The Applicants' Notice of Motion dated 20th July 2012 is accordingly allowed only to the extent of

allowing the joinder of Patel Ravji and Lalji Devraj as the 1st and 2nd Interested Parties respectively to this suit. The Applicants' prayer for an injunction against the Defendants is denied.

The costs of the said Notice of Motion shall be borne by the Applicants.

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this 14th day of January, 2014.

P. NYAMWEYA

JUDGE