



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 594 OF 2012

BETWEEN

LANGATA K.P.A. NAIROBI WEST TRADING CO. LTD PETITIONER

AND

GATERO ENTERPRISES LTD.....1ST RESPONDENT

THE COMMISSIONER OF LANDS 2ND RESPONDENT

THE PERMANENT SECRETARY INTERNAL SECURITY3RD RESPONDENT

THE INSPECTOR GENERAL OF POLICE 4TH RESPONDENT

RULING

1. I have considered the various depositions in this matter and heard the parties. It appears that there is a dispute over the property known as LR No. 10635 and 36 which the petitioner claims ownership but which it does not have title. On the other hand the person alleged to be interfering with the said property, Mr Joshua Willi aka Kamau, states that he is carrying on construction on LR No. 209/13415 – located on Mombasa Road. Both parties have not displayed documents of title so that I am only able to state that the rights to be enforced by the court are at best inchoate at this stage. Furthermore whether LR Nos. 10635 and 26 is the same as LR No. 209/13415 is a matter to be resolved at the trial.

2. Joshua Willie aka Kamau, who is the subject of contempt proceedings, has deponed that he is a contractor of a company known as Njuwangu Holdings Ltd which owns the property on which the construction is ongoing, that is LR No. 209/13415. The said Njuwaga Holdings Limited is not a party to the suit and he does not work for Gatero Enterprises Limited, the 1st respondent.

3. All the material before the Court shows that the issue of who owns LR No. 209/13415 and/or LR No. 209/10635 and 36 is disputed and it cannot be determined at an interlocutory stage nor am I able to state that the petitioner has a *prima facie* case with a probability of success to enable me consider whether I should issue conservatory orders.

4. All parties concede there is also ***Petition No. 143 of 2012*** which is pending before the court. The petitioners in the matter are John Ochieng Ochola and Lydya Okoth who are suing as the Chairman and Secretary of Lang'ata KPA Nairobi West Self Help Group. The same John Ochieng Ochola is a director of the petitioner herein.

5. In ***Petition No. 143 of 2012***, the petitioners claim LR No. 209/10635 and 36 by adverse possession. By a ruling dated 11th January 2013, Hon. Justice Lenaola rejected the petitioner's application for conservatory orders. The circumstances in the present case are similar save that now the petitioner is a limited liability company claiming to have a title. I think to allow grant conservatory orders would in effect amount to a collateral attack on the Hon. Justice Lenaola's decision. To my mind the petitioner in ***Petition No. 143 of 2011*** has now assumed the guise of a limited liability company laying claim to the same land without having obtained title. The learned judge also noted that there is another suit ***Nairobi HCCC No. 464 of 2011*** which he directed should be heard together with ***Petition 143 of 2012***.

6. Even if circumstances have changed, I do not think it is proper for to the court to encourage a multiplicity of suits in matters concerning the same subject matter. In light of what I have stated I make the following orders;

- i. **I decline to grant conservatory orders in favour of the petitioner and in particular the Chamber Summons dated 28th December 2012 is dismissed and all interim orders currently in force are hereby discharged forthwith.**
- ii. **The Notice of Motion dated 23rd January 2013 is dismissed and Joshua Kamau Willie otherwise known as Joshua Willi aka Kamau is hereby discharged from these proceedings.**
- iii. **This petition is stayed pending any decision that will be reached in *Petition No. 143 of 2012* or further orders from the Court.**
- iv. **Mention on 20th February 2013 before Honourable Justice Lenaola for directions. Notice to issue to all parties.**

DATED and DELIVERED at NAIROBI this 28th day of January 2013

D.S. MAJANJA

JUDGE

Mr Rabala instructed by Rabala and Company Advocates for the petitioner.

Mr Awino, Litigation Counsel, instructed by the State Law Office for the 3rd and 4th respondents.

Mr Githara instructed by Githara and Associates Advocates for the Joshua Kamau Willie.