



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 568 of 2012

LAWRENCE GEORGE MWEBI.....PLAINTIFF/APPLICANT

VERSUS

MARGRET WANJIKU.....DEFENDANT

EMBAKASI RANCHING COMPANY LTD.....2ND DEFENDANT/RESPONDENT

DIVINER KEMUNTO NYARERA.....3RD DEFENDANT/RESPONDENT

RULING

1. The plaintiff/ applicant has filed a notice of motion dated 4th September 2012, under order 40 rules 1(a) 2, 3 and 10, Order 51 Rule 1 of the Civil procedure rules, Section 3, 3A and 63 (e) of the Civil Procedure Act and all other enabling provisions of the law, seeking the following orders.

i. Spent

ii. That a temporary injunction do issue restraining the defendant by himself, his agents, servants and or any other persons whomsoever from encroaching upon, trespassing onto, remaining on or in any way howsoever interfering with all that plot known as plot number V7502 and V7503 which appear as plot numbers c304 and m39 as per the subdivision plan, situate at Embakasi Nairobi pending the hearing and determination of this application.

iii. Spent

iv. That pending the hearing and determination of this suit, a temporary injunction do issue restraining the defendants, their agents, servants and or any other persons whomsoever from encroaching upon, trespassing onto, remaining on or in any way howsoever interfering with all that plot known as plot number V7502 and V7503 which appear as plot numbers c304 and m39 as per the subdivision plan, situate at Embakasi Nairobi pending the hearing and determination of this application.

v. That pending the hearing and determination of this suit the defendants, their servants and or agents or otherwise howsoever be restrained from interfering howsoever with the plaintiff/applicant's quiet enjoyment, use, possession, ownership and occupation of the suit property.

vi. That the OCS Ruai police station be directed to assist and ensure compliance by the defendant's/respondents.

vii. That costs of this application be borne by the defendants.

The application is based on the following grounds.

- a) The plaintiff is the bonafide purchaser and owner of all those known as plot number V7502 and V7503 which appear as plot numbers c304 and m39 on the subdivision plan situate at Embakasi, Nairobi.
- b) The plaintiff bought the said plot from Diviner Kemunto Nyarera who was the owner of all those plots known as plot no. V7503 and V7502 which appear as plot numbers c304 and m39 on the subdivision plan respectively and exercised in respect to share certificate numbers 01207 and 012072 registered under Embakasi Ranching Company Limited the 2nd defendant herein.
- c) The 2nd defendant on the diverse dates in the month of August, 2012 sanctioned and authorized a stranger the 1st defendant herein without any scintilla of right or excuse to encroach on the plaintiff's plots and purported to allege ownership rights which allegations were dismissed therewith but the 1st defendant refused and encroached on the plaintiff's subject plots and demolished developments thereon.
- d) On diverse dates in the month of August 2012, the 1st defendant encroached on the plaintiff's plot and purported to allege ownership rights which allegations were dismissed therewith but the defendants returned and encroached onto the plaintiff's subject plots and demolished developments thereon.
- e) The business operations and construction over the subject plot has been brought to a standstill courtesy of the defendant's wrongful acts and the undying threats of repeated destruction in event the plaintiff resumes construction.
- f) There is a real and probable likelihood that the defendants shall continue trespassing onto the plaintiff's subject plot unabated and destroy property thereon unless restrained by this Honorable court.
- g) It is in the wider and paramount interest of justice that the prayers sought herein be granted to preserve the subject plot from further alienation and waste due to the defendant's illegal and wrongful actions herein above quoted.
- h) No prejudice whatsoever or at all shall be visited upon the defendant herein if this application is allowed.

1. The plaintiff/ applicant filed a supporting affidavit dated 4th September 2012 and a further affidavit dated the 26th November 2012 filed the same day in response to the respondents' affidavits. The plaintiff deposes as follows in brief ; That on or about 19th August 2010, he purchased all those plots known as plot number V7502 and V7503 which appear as plot numbers c304 and m39 on the subdivision plan from Diviner Kemunto Nyarera who was the owner of the subject plot. He was given the following documents to confirm his ownership rights over the subject plots, an ownership certificate number NMC 012071 and NMC 012072 duly signed and sealed and a subdivision plan showing the exact location of his subject plots vis a vis the neighboring plots among others. That immediately upon purchase, he assumed both active and constructive possession and commenced developments thereon. On or about the year, 2011 he embarked on permanent construction over his plot by among others, putting up a perimeter wall encamping the plot and partitioning walls. That on diverse dates in the month of August 2012, the defendants encroached onto his plots and purported to allege ownership rights which allegations he dismissed as he has been in occupation of the subject plot since 19th August 2010 without any interruption or at all. That despite his resistance and report to the neighboring Ruai police station, the defendants went and destroyed his property and construction on the subject plot. That his developments have been hampered and he has been exposed to public ridicule, mental anguish, torture, loss of business and pecuniary loss. That the business operations and construction over the subject plot has been brought to a standstill due to the defendant's wrongful acts and the undying threat of repeated destruction in the event he resumes his normal daily operation over the subject plot. That as the defendant has opted to use force, violence and destruction in seeking to forcefully remove him from his subject plots. That despite his report to Ruai Police Station no action has been taken as against the defendants as they proceed unabated in threatening to further invade his

plot, forcefully evict him and destroy all his property thereon. That he is certain that the defendants are determined to forcefully enter into his plot and destroy his property in entirety over the subject plot with a view of instilling fear in him so that he can run away due to his financial inability to resist and thus granting him an opportunity to invade and occupy his plot and dispossess him of the same in achievement of his intended forceful plot grabbing mission. That the defendants have proceeded to forcefully trespass and demolish his property thereon without even a Court order sanctifying their actions. That he has sentimental attachments to the subject plot and as his only investments, he stands to suffer irreparable loss in event the defendants shall continue to unlawfully interfere with his ownership of the same as he purchased plots at Kshs 1,600,000/- in total, each costing Kshs.800,000/-. That there is a real and probable likelihood that the defendants shall continue trespassing onto his subject plot from further alienation and waste due to the defendant's illegal and wrongful actions..

3. Mr. James Karanja Mwangi a director of the 2nd defenadant/ respondent filed a replying affidavit dated 27/9/2012. He depones as follows; that the certificates attached marked as LGM 2 and LGM3 are certificates issued to non shareholders of the company by the 2nd respondent. That he has perused the said documents at the back and discovered that officially the applicant herein was not allocated the said parcel of land since the same has not been approved by the board and endorsed by a director in charge of allocation who is him. That the subsequent cancellation and purported allocation is by a person not known to the company as such there is no proof of allocation. That further the applicant is his application purports that the parcel of land herein was sold to him by the 3rd respondent and is plot number V7502 and V7503 which appear as plot number e304 and m39 in the subdivision plan. That the said allegation is not true due to the fact that a plot has only one number and in all his experience as a Director of the 2nd respondent he has never come across a plot with two numbers. That upon looking at the annexure marked as LGM 4 on the supporting affidavit of the applicant he sought to confirm who the registered owner of the suit parcels of land was. That he found out that there was no plot known as plot number e304. That he found out that the parcel of land highlighted on the annexure LGM 3 is plot numbers m39 and c304. That from the records the 2nd defendant it was confirmed that the plot known as m39 was allocated to one Mararo Wakaba way back on the 7th of July 1983 and plot number C304 was allocated to one Davit Wakaba on the 7th of July 1983. That the said persons are original share holders of the 2nd respondent and the parcels of land were issued as per their shareholders certificate being number 8625 and 8624 respectively as shown in the area map indicating the exact location of the said parcels of land marked as JKM2. That from the facts it is obvious that the applicant has never presented his documents to the 2nd defendant to enable the second defendant verify and subsequently allocate a plot to him. That further the annexures market as LGM 2 and LGM3 in the supporting affidavit of the applicant have not been approved by the board and no allocation has been granted to the applicant. That when any allocation is granted the ownership certificate must be signed by a surveyor and a director. That the allegation by the applicant that the parcel of land known as V7502 and V7503 are similar to parcels number c304, which is nonexistent and m39 is not true.

4. The 3rd Respondent Diviner Kemunto Nyarera filed a replying affidavit dated 16/11/2012. She deponed as follows; That that she bought plot numbers V7502 and V7503 which appear as plot e304 and m39 from the 2nd defendant herein on share certificate no.012071 and 012072 respectively and was duly issued with the share certificates in respect of the subject plots and was put in possession of the same. That she has been in possession the subject plots herein until 19th august, 2010 when she sold the same to the plaintiff with a consideration price under an agreement dated 10th august, 2010 signed between herself and the plaintiff. That she also paid the statutory fees as required by the 2nd defendant and was issued with receipts. That after she sold the subject plots to the plaintiff, the plaintiff took possession and has been in possession of the same since then. That the 2nd defendant's affidavit in support amounts to an admission of her ownership of the plots since the same were issued by the 2nd defendant to her as a non shareholder. That the averment that she was not officially allocated the subject plots and that the allocation has been approved is not tenable as he is not disputing the fact that her receipts are indeed issued by them. That the 2nd defendant's conduct is mischievous as they want to eat the cake and have it.

5. In the further affidavit of Lawrence George Mwebi dated 26/11/12, he clarifies the error in typing the plot no. c304 as e304 and avers further that, in respect to plots number V7502 and V7503 he was shown

the demarcation, beacons and even fenced the subject plots and he confirm that his plots exist on the ground as they appear in the sub-division plan. That he has looked at his annexures and specifically annexure LGM 4 of his supporting affidavit and he still confirms that the suit plots appear as C304 and M39. That the plots in question in this matter are two distinct plots, that is plots no. V7502 and V7503 which appear as plots no. C304 and M39 in the subdivision plan which in essence are one and the same since they are the subject plots which are in dispute on the ground. That the allegation that the suit plots herein have two plots numbers that is V7502 and V7503 on one hand and C304 and M39 on the other hand are therefore not correct.

6. The 1st defendant was represented by the firm of Ogesa and company, though served they did not file any documents to oppose the application nor did any of the defence counsels attend the hearing of the application. Counsel for the applicant relied on the case of **Joseph Waweru Muuri vs. The Principal Mai Mahiu Secondary and another eKLR 2006 and the case of Geilla vs. Cassman Brown 1972 E. A.** I have carefully considered the facts of the case the applicants counsels submissions and the applicable law as set down in the case of **Geilla vs. Cassman Brown 1973 E.A pg 358** where the principles of granting an injunction were stated as follows that;

- i. The plaintiff has to establish a prima facie case with the probability of success,
- ii. That if the injunction is not granted the plaintiff is likely to suffer irreparable loss,
- iii. That if the court is in doubt it should decide the case on balance of convenience.

7. The applicant claims that he bought the said parcels of land c304 and m39 the subject of this case from the 3rd defendant who also claims that she paid for the 2 plots and was issued with share certificates. The 2nd defendant does not deny the existence of plots c304 and m39 but claims that they belong to third parties. It is apparent from the affidavit of the applicant that he is in occupation of the said plots and has been since 2010. In the affidavit of Mr. James Mwangi he depones at paragraph 16 he states that the applicant has not presented the documents to the 2nd defendant to verify and subsequently allocate him a plot. He states further that the applicants document have not been approved by the board and that no allocation was done to the applicant, that when an allocation is done the certificate of ownership must be signed by the surveyor and the director. He also raises the issue that the plot the applicant is referring to is one plot. From the facts before me the applicant seems genuine when he states that he bought two plots allocated to the 3rd defendant. If indeed the applicant has been in possession illegally, then the 2nd defendant ought to have taken action against him. If indeed there are other owners why have they not filed suit against the applicant. I find that he has a prima facie case with a probability of success. He is in possession and is likely to suffer loss and damage. His allegation against the defendants of interference were not controverted. As stated by Justice Kimaru in the case cited, *the purpose of granting an injunction is to maintain the status quo on the ground pending the hearing and determination of the main suit.* The issue in dispute is whether the 2nd defendant allocated the 2 plots to him and whether it is one or two plots. The plaintiff is apprehensive that the defendants will interfere with his occupation although it is apparent that the 3rd defendant is not involved. I will grant an injunction against the 1 and 2nd defendants as sought in prayers 4, 5 and 6 in the application dated 4th September 2012. Costs shall be in the cause.

Orders accordingly.

Dated, signed and delivered this 21st day of February 2013
In the presence of;

**R. OUGO
JUDGE**

.....**PLAINTIFF/AAPPLICANT**

.....1ST DEFENDANT/ RESPONDENT

.....2ND DEFENDANT/ RESPONDENT

.....3RD DEFENDANT/ RESPONDENT

.....COURT CLERK