



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENTAL & LAND DIVISION
ELC NO. 967 OF 2012

TITUS GICHARU MWANGI.....PLAINTIFF/APPLICANT

-VERSUS-

MARY NYAMBURA MURIMA.....1ST DEFENDANT/RESPONDENT

SAMUEL MBURU KIBIRO.....2ND DEFENDANT/RESPONDENT

RULING

I have before me the plaintiff's Notice of Motion application dated the 7th December, 2012 expressed to be brought under Order 40 Rule 1, 2, 3 and 9 of the Civil Procedure Rules, Section 3A and 63(e) of the Civil Procedure Act Cap 21 Laws of Kenya and all other enabling provisions of the law. The application seeks a substantive order for an injunction under prayer No. 3 in the following terms:-

3. "That a temporary injunction do issue restraining the defendant/respondent by herself, her servants, employees and/or agents and anybody claiming through her from dealing with transferring, selling, alienating, interfering with the plaintiff/applicant's quiet possession and/or disposing of plot No. C 142 Embakasi/Njiru United Road Estate being part of Nairobi Block III Komarock pending the hearing and determination of this suit".

The application is supported on the grounds set out on the face of the application and the grounds contained in the plaintiff's supporting affidavit sworn on the 7th December, 2012 and a supplementary affidavit sworn by the plaintiff on 5th April, 2013.

The 1st Defendant Mary Nyambura Murima in opposition to the plaintiff's application for injunction filed a replying affidavit sworn on 19th December, 2012 in which under paragraph 3 she deponed as follows:-

3. "That the prayers to restrain me from transferring, selling, alienating Plot No. C 142 Embakasi/Njiru Untied road Estate is misconceived and overtaken by events since I had long sold and transferred the said plot as at 5th December, 2012, two days before the plaintiff/applicant's application was filed in court and the orders issued subsequent were obtained".

By a Notice of Motion application dated 25th January, 2013 Mr. Samuel Mburu Kibiro made an application to be enjoined in the suit as the 2nd Defendant ostensibly on the ground that he (Samuel Mburu Kibiro) is the legal owner of the suit property Plot NO. C 142 Embakasi/Njiru United Road Estate having purchased the same from the 1st Defendant (Mary Nyambura Murima) as at 5th December, 2012, two days before the plaintiff/applicant's application was filed in court and the orders issued subsequent were obtained. The 2nd proposed defendant's said application was not opposed by the plaintiff and the 1st defendant and the court on 20th February, 2013 made an order enjoining the said Samuel Mburu Kibiro as the 2nd defendant in the suit.

In the meantime the 1st Defendant had by a Notice of Motion dated 28th January, 2013 made an application seeking a discharge of the interim order of injunction given by the court on 7th December 2012 based on the ground that the 2nd defendant was legal owner of the suit property and therefore the injunction cannot hold.

It is my view that to the extent that the 2nd defendant had not been enjoined in the suit as at the time this application was filed on 28th January, 2013 the same was misconceived and was an abuse of the process of the court I order that the same be struck out of the record.

Coming to the application by the plaintiff dated 7th December, 2012 seeking an injunction against the 1st Defendant to restrain her, her servants and/or agents from dealing with, transferring, selling, alienating, interfering with the plaintiff's/applicant's quiet possession and/or disposing of plot No. C 142 Embakasi/Njiru United Road Estate it is clear that the plaintiff omitted and/or failed to take the cue once the 2nd defendant was enjoined to the suit to amend his suit and the Notice of Motion such that the orders he seeks against the 1st Defendant cannot be granted the suit property having already been transferred to the 2nd Defendant.

As the plaintiff's suit now stands there is no claim against the 2nd Defendant nor is there any claim against the 2nd defendant in as far as the plaintiff's Notice of Motion of 7th December, 2012 is concerned.

I have reviewed and evaluated the pleadings and the parties submissions in this matter and I am satisfied that the order of injunction sought by the plaintiff in the Notice of Motion dated 7th December, 2012 cannot be granted the suit property having been transferred to the 2nd defendant before the institution of these proceedings. The court does not act in vain and it is my finding and holding that the plaintiff's application has been overtaken by events and in the premises the plaintiff ought to take a fresh view of the matter having regard to the changed circumstances of the case.

The court at this stage is not called upon to determine the validity or otherwise of the alleged sale transaction by the 1st defendant to the plaintiff and the 2nd defendant. The point is that there is now nothing the court can restrain the 1st Defendant from doing as relates the suit she property having transferred the same to the 2nd defendant.

For all the above reasons I hold and find the plaintiff's application lacks any merit and I dismiss the same with costs to the defendants. The interim order of injunction given in this matter on 7th December, 2012 stands discharged.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF JUNE 2013.

J. M. MUTUNGI

JUDGE

In the presence of:

..... for the 1st & 2nd Plaintiffs

..... for the Defendant