



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ELC CIVIL SUIT NO. 945 OF 2012

JASPAL SINGH BIRDI.....PLAINTIFF

VERSUS

KENYA VETERINARY VACCINESDEFENDANT

RULING:

The Applicant herein **Jaspal Singh Birdi** by an Amended Notice of Motion filed 30/11/2012 and amended on 8th April, 2013, sought for various prayers. The said Notice of Motion is brought under **Order 40 Rule 1,2,3,& 4 of the Civil Procedure Rules and Section 1A,1B and 3A and 63(c) of the Civil Procedure Act** and all other enabling provisions Law. The applicant has sought for these Orders:-

- i. Restraining Orders to restrain the Defendant by itself, agent, employees and servants by way of an injunction, stopping them from constructing and/or alienating in any way building a wall fence on the Plaintiff's property **LR No. 209/12501/12** Off-Enterprise Road pending the final hearing and determination of this suit.
- ii. That orders made pursuant to this application together with the Notice of Motion and supporting affidavit be served on the Defendant by the Advocate of the Plaintiff.
- iii. Costs of the application be provided for.

The application was supported by the grounds on the face of the application and by the supporting affidavit of **Jaspal Sighn Birdi**. The grounds in support are notably that;

- a. The Plaintiff did purchase the suit land, 22 years ago through legal process of Sale Agreement and transfer
- b. The property was duly transferred in the name of the Plaintiff upon payment of statutory monies.
- c. That Defendant has now constructed a perimeter wall on the Plaintiff's property.
- d. That Plaintiff is the legal owner of the suit property and has a prima –facie case with high probability of success and will suffer irreparable damages if construction on the property is to continue.

In his affidavit, applicant stated that in the land's office, records show that he is the registered owner of the property in question. The application is opposed and the Defendant through **Dr Geoffrey Mutai** alleged that it's the legal owner of the property in question. That the land was without the institute's knowledge and consent illegally sub-divided and among the illegal subdivisions is LR No. 209/12501 which the Applicant claims. He further averred that the Defendant has never surrendered its title to pave way for sub—divisions and/or allocation of any part to any person. That the land purportedly granted to

the applicant was not available as it was and is still owned by the Respondent.

The parties herein canvassed this application by way of Written Submissions. The Court has now carefully considered the Written Submissions, the pleadings and its annexures and the authorities cited.

The applicant has sought for injunctive Orders. The applicant must satisfy the Court that he has established the principles set out in the case of **Giella Vs Cassman Brown Co.Ltd 1973 EA 358** for grant of the injunctive relief. The applicant ought to have satisfied the Court that;

- i. He has a prima –facie case with high chances of success.
- ii. He might suffer irreparable loss and injury which will not be adequately compensated by an award of damages if Orders not granted in his favour.
- iii. Balance of convenience will tilt in his favour.

From the available evidence, there is no doubt the Plaintiff **Jaspal Singh Birdi** purchased **LR No. 209/12501** from **Rielco Company Ltd** on **3rd February, 1997**. The Plaintiff purchased the said property from Rielco Ltd for a consideration of **Kshs.4.5 Million**. He paid the full purchase price. He was issued with a title document.

The Title documents states that. *THE PRESIDENT OF REPUBLIC OF KENYA, GRANTS UNTO JASPAL SINGH BIRDI OF NAIROBI...* However, applicant has alleged that, he purchased the parcel of Land for value or consideration of **Kshs. 4.5 million** from a third party, **Rieco Co.Ltd** . He was not granted the land by the President of the Republic of Kenya.

The Defendant on the other hand claims the land in question belonged to it and it was illegally sub-divided and allocated to different individuals and the suit land is one of the illegally sub-divided plots and that Defendant has always been in possession of the land. Defendant claimed **Reilco Co.Ltd** did not have a good title to pass to anyone and Defendant has never surrendered its original title of the property to anyone. Therefore, the Plaintiff title to the suit land is hereby challenged. The Court cannot hold that Plaintiff has prima facie case with high probability of success.

Though applicant alleged that he purchased the suit property in 1997, there is no evidence that, he ever took possession of the land. There is no evidence that, Defendant herein intends to dispose off the land. The applicant herein will not suffer any irreparable loss or injury which would not be compensated by an award of damages if Orders sought are not granted.

The Defendant herein, is a government institution which is claiming that its land was illegally subdivided and allocated. Plaintiff is a private individual and claims to have title to the land. The Plaintiff can easily dispose of the matter but not the Defendant which is a government institution. The balance of convenience herein tilts in favour of the Defendant. As was held in the case **of Nahendra B. Patel & Sunyakant B Patel Vs Lorimar Apartments Ltd (2007) e KLR.**

“Since each of the party herein, claims the allocation to the other was irregular, there is no way the Court can determine the dispute conclusively without the benefit of discovery and oral evidence being subjected to cross- examination to establish the truth of the matter in dispute. In the circumstances, I am not persuaded to exercise my discretion in favour of the applicant and Grant the Orders sought”.

In the instant application, I find that the applicant has failed to satisfy the Court that, he has a prima facie case with high probability of success. I am therefore, not persuaded to exercise my discretion in his favour and grant the Orders sought.

For the above reasons, the Plaintiff/Applicant’s amended notice of motion dated 30th November, 2013 and amended on 8th April, 2013 is hereby dismissed.

Costs in the Cause. Plaintiff to set the matter down for hearing to be decided on merit.

Dated, Signed and delivered this 26TH day of July, 2013.

L N GACHERU

JUDGE

In the Presence of:-

Mr K ariuki holding brief for Kiplagat for the Applicant

Mr Kirimi holding brief for P K Mbaabu for the Defendant/ Respondent.

Anne Court Clerk

L N GACHERU

JUDGE