



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENTAL & LAND DIVISION
ELC CIVIL SUIT NO. 89 OF 2013

ROBERT MURIITHI NDEGWA..... PLAINTIFF/APPLICANT

-VERSUS-

DANDORA JUA KALI ASSOCIATION.....DEFENDANT/RESPONDENT

RULING

The plaintiff by a plaint dated 17th January, 2013 filed the instant suit seeking a declaration that he is the registered owner of Dandora Jua Kali Association of Plot Nos. Block 6-261 and Block 6-259 and a permanent injunction restraining the Defendant from in any manner dealing with or interfering with the said plots. Contemporaneously with the plaint the plaintiff filed a Notice of Motion application where he seeks an order of injunction restraining the defendant the third parties, squatters and/or trespassers under its directions, its agents, servants and/or employees from trespassing, entering, remaining on, creating nuisance or in any way dealing with or interfering with the suit property rights of quiet possession, occupation and enjoyment thereof.

The foundation of the plaintiff's application is that the plaintiff had purchased plot Nos. Block 5-PL-210 and 211 from one Antony Njoroge Njoki who had in turn purchased the plots from Malimungu Jua Kali Association Development Projects. It is the plaintiffs case that Malimungu Jua Kali Association Development Projects has over time metamorphosed by way of changes in name to Kayole Junction Housing Scheme and ultimately to Dandora Jua Kali Association. It is the plaintiff's averment that as the Defendant was changing its name the plaintiff was being issued with different share certificates and that presently the plaintiff has been issued share certificates by Dandora Jua Kali Association specifying he is the registered proprietor of plot Nos. Block 6-261 and Block 6-259.

The plaintiff claims that from the time he acquired the subject plots on 14th August 2004 from the said Anthony Njoroge Njoki he has been in occupation and was having peaceful and quiet enjoyment of the plots until 20th December, 2012 when third parties, squatters or trespasser under the directions of the Defendant invaded the suit property and started to demolish the plaintiffs structures thereon. The plaintiff has sworn an affidavit in support of the application dated 17th January, 2013 that sets out the chronology of events leading to the filing of the instant suit.

The Defendant has through Joseph Kiarie Kingora who states he is a secretary of the Defendant sworn a replying affidavit dated 27th February, 2013 in which he simply denies the averments by the plaintiff as outlined in the plaintiff's application and supporting affidavit. The Defendant avers that it has never been

referred to or known as Malimungu Jua Kali Association Development planning and/or as Kayole Junction Housing Scheme. The defendant denies it has ever changed its name as alleged by the plaintiff and avers that it has always been known as Dandora Jua Kali Association and contends that the plaintiff does not own plot Nos. 325 and 326.

The plaintiff and the defendant have filed written submissions with the plaintiff maintaining the Defendant has repeatedly changed its name. The plaintiff has further maintained that he has since allocation occupied the plots on the ground and that the proprietorship records at City Council of Nairobi and rates and rent payment records at the City Council reflects the plaintiff as the proprietor. The defendant claims the documents the plaintiff holds in regard to the plot are not genuine and therefore are forgeries.

I have reviewed the pleadings, the plaintiffs Notice of Motion application and the affidavits and the annexures thereto and the parties submissions. It is evident that the plaintiff has had dealings with entities variously described as Malimungu Jua Kali Association Development projects, Kayole junction Housing Scheme and Dandora Jua Kali Association who the plaintiff alleges have something to do with the two plots the subject of the suit. The issue is whether Dandora Jua Kali Association is the predecessor to Malimungu Jua Kali Association Development Projects and Kayole junction Housing Scheme. The plaintiff insists it is while the defendant insists Dandora Jua Kali Association has never had any other name.

That indeed would be a fact to be proved by evidence at the trial. The defendant has asserted the documents that the plaintiff holds respecting the suit plots are not genuine but has not tendered any evidence to establish that. Whereas the plaintiff has tendered documents that show his proprietorship of the suit property the Defendant has not tendered any evidence to counter the plaintiff's assertions. For instance the Defendant has not furnished any evidence to disapprove the plaintiff's ownership of the suit plots. The Defendant does not state who owns the two (2) plots the plaintiff claims.

In the circumstances of this case the order that commends itself is that the parties be required to observe the obtaining status quo pending the hearing and determination of the suit when the ownership of the suit plots will be established and determined.

In the premises thereof the parties are ordered and directed to maintain the current status quo whereby there will be no disposal of the subject plots by either party and there will no further developments effected on the disputed plots pending the hearing and determination of the suit. The parties are hereby directed to hasten compliance with order 11 of the civil Procedure Rules to facilitate the hearing and disposal of the suit.

The costs of the application will be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF SEPTEMBER 2013.

J. M. MUTUNGI

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant