



IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 132 OF 2011

STEPHEN NGANGA MUIGAI.....PLAINTIFF
VERSUS
ISMAIL JAMA ALI.....1ST DEFENDANT
NOOR JAMA.....2ND DEFENDANT

RULING

By the Notice of Motion dated 8/6/2011, Stephen Nganga Muigai, the plaintiff/applicant herein, seeks an order of injunction to temporarily restrain the defendant Ismail Jama Ali from trespassing, interfering, constructing or dealing with Nakuru/Municipally Block 15/668 pending the hearing of this application inter-partes. The application is predicated on the grounds found on the face of the application, the replying affidavit of the applicant dated 8/6/2011 and the affidavit dated 8/11/2011. When Ms Gatei, counsel for the applicant appeared before the court under certificate of urgency on 10/6/2011, the court certified the application as urgent and granted prayer 3 of the application pending the hearing of the Notice of Motion inter-partes. Thereafter the application was adjourned severally since an application for joinder of Noor Jama as the 2nd defendant was still pending.

When this application came up for hearing on 10/11/2011, Mr. Kipkenei, counsel for the respondent was not present and the court went ahead to hear counsel for the applicant, ex-parte.

I have seen the order sought by the applicant. The prayer is actually one – prayer 2 is replicated in prayer 3. Prayer 3 was granted by J. Ouko ex-parte. It would be expected that it is prayer 2 that would be seeking the order of injunction to subsist till the hearing of the suit but there is no such prayer. Though this application is brought pursuant to **Orders 40** of the **Civil Procedure Rules** and **Section 3A** of the **Civil Procedure Act**, the applicant should have been specific as to what prayer he seeks. It is only the submissions that the counsel urged the court to grant the orders of injunction pending the hearing of the suit. The court can only grant the orders sought.

The dispute herein relates to the suit land which the applicant claims to be the registered owner and he exhibited a certificate of lease issued to him on 28th February 2007, the letter of allotment dated 4/5/1999 and a receipt issued on 14/8/2001 by Department of Lands in respect of the suit land. In his replying affidavit dated 25/6/2011, the 1st defendant claims to have bought the said land from one Raymond Kiplangat and a title was issued to him on 28/3/2006. Raymond Kiplangat had been issued with a certificate of lease on 8/4/2005. The 1st defendant/respondent also claimed to have been paying land rates to the Council and he produced receipts to that effect. The 1st defendant has since sold the said land to one Noor Jama, the 2nd defendant who exhibited the sale agreement dated 25/2/2010. He has since paid land rates to the Municipal Council of Nakuru. Noor swore a replying affidavit on 11/10/2011 in which he opposed the application.

It is apparent that the suit land bears two land titles. At this stage it cannot be ascertained whether or not

any one of them is genuine. That can only be ascertained at the full hearing.

The applicant conducted a search on 13/7/2011 (SNM1) and the certificate indicates that the land is registered in his name. The respondents did not exhibit any search certificate.

In his affidavit, the applicant had sworn that when he visited the land he found that there was a wall and gate erected on the property which raised the applicant's fears that he will be deprived of the said property.

I have found that the applicant has a certificate of lease (SNM3) over the property and the search certificate confirms that he is still the registered owner. I find that he has demonstrated that he has a prima facie case with high chances of success. If an order of injunction is not granted the said land may be put beyond his reach and he is likely to suffer irreparably. So that even though no prayer was sought for an injunction pending hearing of the suit, it seems it was an error on part of counsel, to repeat the same prayer twice and not specify that the order be granted pending hearing of the suit. For the reason that there are two titles to the plot is enough reason to grant an order of injunction to restrain the respondents from, disposing of, alienating or dealing with the land in any manner adverse to the applicant's interests.

In the exercise of this court's inherent powers under **Order 40** of the **Civil Procedure Rules, Section 3A** of the **Civil Procedure Act** and taking into account the object of **Civil Procedure Act – S.1A & B**, I hereby grant an order of injunction restraining the defendant from continuing with any developments, disposing of, selling, constructing or in any way dealing with the suit land in any manner adverse to the applicant's interests and rights over the suit land, pending the hearing of this suit. Costs to be in the cause.

DATED and DELIVERED this 28th day of March, 2012.

R.P.V. WENDOH

JUDGE

PRESENT:

Ms Lagat holding brief for Mr. Mwangi for the plaintiff/applicant.

N/A for the 1st defendant/respondent.

N/A for the 2nd defendant/respondent.

Kennedy – Court Clerk.