

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ENVIRONMENTAL & LAND CASE 178 OF 2009

MOROP DISTRIBUTORS (K) LIMITED1ST PLAINTIFF

JOHN GATHAMA MAINGI.....2ND PLAINTIFF

VERSUS

CITY COUNCIL OF NAIROBI.....1ST DEFENDANT

JOB KIPNANDI CHEBON.....2ND DEFENDANT

N.K. BROTHERS LIMITED.....3RD DEFENDANT

ATTORNEY GENERAL.....4TH DEFENDANT

RULING

The application that is before this Court for consideration is a Notice of Motion dated 21st December 2011, and is filed by the 2nd Plaintiff. At the hearing of the application on 17th May 2012, the Applicant abandoned all the prayers except prayers 5 and 6, which seek orders for the *status quo* to be maintained and the 2nd Plaintiff to continue being in possession of the property comprised in title No. L.R. No. 209/11289 (hereinafter referred to as the suit premises), and for costs.

The grounds for the application are that the 2nd Plaintiff is a *bona fide* purchaser for value of the suit premises, having purchased the same from the 5th Defendant and culminating in a transfer of the suit premises to him on 16th October 2009. Further, that he has been in possession of the same since the year 2009. The 2nd Plaintiff states that he now faces eviction and dispossession by the 3rd Defendant arising from findings made by the Nairobi Resident Magistrate's Court in Criminal Case No. 956 of 2009, wherein the 2nd Plaintiff was charged with and convicted of the offence of Forcible Detainer. The Plaintiff argued that this court has jurisdiction under section 3A of the Civil Procedure Act to issue orders of *status quo* in dispensing justice.

The Defendants opposed the application, with the 1st and 2nd Defendants associating themselves with the submissions by the 3rd Defendant. The Defendants primarily urged that the 2nd Plaintiff lacks any proprietary interest in the suit property, as the lower court had conclusively determined in Nairobi Resident Magistrate's Court Criminal Case No. 956 of 2009 that the documents the 2nd Plaintiff was relying on were forgeries, and had convicted the 5th Defendant of the offence of forgery. Further that the 2nd Plaintiff was also convicted of the offence of forcible detainer, and had not appealed from the said conviction. It was also argued by the Defendants that there is no relief known as *status quo* under the Civil Procedure Rules, and the 2nd Plaintiff application was therefore untenable and misconceived.

I have carefully considered the pleadings and arguments made by the parties to this application. There are two issues for determination. The first is whether this court has jurisdiction to grant *status quo* orders, and secondly, if so, whether it is in the interests of justice that the said orders are granted in the present case.

On the first issue I have no hesitation in finding that this Court has such jurisdiction as granted not only

be sections 3A and 63 (e) of the Civil Procedure Act, but also by Article 10 and 159 of the Constitution. Section 3A and 63 (e) of the Civil Procedure Act gives this court inherent jurisdiction to make such orders including interlocutory orders as may be necessary for the ends of justice to be met. Article 159 of the Constitution obliges this Court to dispense justice without undue regard to procedural technicalities, and to protect and promote the principles of the Constitution.

The key principles of governance are to be found in Article 10 of the Constitution, which requires this Court in interpreting or applying the law to be guided by the rule of law, human dignity, equity and social justice among other principles. The jurisdiction of this court to make orders to ensure that justice is done is therefore not only expressly allowed, but has also been expanded by the above-stated provisions of the Constitution. This jurisdiction includes the grant of *status quo* orders if found to be merited.

The second issue then is whether the orders sought of *status quo* and keeping the 2nd Plaintiff in possession in the present case would be in the interests of justice. The 2nd Plaintiff claims that he is an innocent purchaser for value and has been in possession of the suit premises from 2009. It is argued in opposition that the orders will prejudice the 3rd Defendant, who has brought evidence to show that the property was transferred to them on 2/12/2008 by the 2nd Defendant, and that a court of law has found that the 3rd Defendant is the legally registered owner of the suit premises. It is my finding that the scales of justice in this case tilt in favour of the 3rd Defendant for reasons that the law must be upheld, and the said Defendant cannot be prejudiced for a transaction that he was not party to.

Justice will therefore not be served granting the *status quo* orders, and the 2nd Plaintiff must pursue justice from those responsible for his unfortunate predicament. For these reasons the 2nd Plaintiff's application dated 21st December 2011 is denied, and the costs of the application shall be in the cause.

Dated, signed and delivered in open court at Nairobi this 27TH day of July 2012.

P. NYAMWEYA

JUDGE