



RAZOR INVESTMENT LTD.....PLAINTIFF/APPLICANT

VERSUS

MURABAHA HOLDING LTD.....DEFENDANT/RESPONDENT

RULING

The Plaintiff/Applicant herein filed a notice of motion dated 14th May 2012 and supported by a supporting affidavit of Nanji Kalyan Hirani. This application brought under Order 40 Rule 1, 2 and 3 of the Civil Procedure Rules and section 3A of the Civil Procedure Act and the applicant/Plaintiff is seeking the following orders:

1. That this Honourable court be pleased to grant an injunction restraining the Defendant/Respondent whether by itself, its agents ,employees and/or servants from entering ,remaining, destroying ,construction on ,alienating and/or in any other way interfering with the Plaintiff/Applicant's property being L.R No 330/55 (Original No. 330/51/2)as well as buildings thereon pending the hearing and determination of this application inter-partes.
2. That this Honourable court be pleased to grant injunction restraining the Defendant/Respondent whether by itself, its agents ,employees and/or servants from entering ,remaining, destroying ,construction on ,alienating and/or in any other way interfering with the Plaintiff/Applicant's property being L.R No 330/55 (Original No. 330/51/2)as well as buildings thereon pending the hearing and determination of this suit.
3. That the Defendant/Respondent hand over vacant possession of the suit property to the plaintiff/Applicant's in the same condition as it was immediately before the defendant /Respondent took illegal occupation of it and cease all continuing trespass.
4. That the Defendant /Respondent pays to the plaintiff/Applicant damages incidental and consequential to their illegal occupation to the plaintiff/Applicant
5. That the Officer Commanding Muthangari Police station do enforce compliance of the above orders
6. That the Honourable court be pleased to waive the requirement under Order 3 Rule 2 of the civil procedure Rules 2010 that plaintiffs include signed statements of its witnesses at the time of filing suit and allow the plaintiff to furnish same fifteen (15)days prior to the trial conference.

In the supporting affidavit, Nanji Kalyan Hirani states that he is one of the Directors of Razor Investments Limited and duly authorized to swear the affidavit on behalf of the Plaintiff/Applicant. He says that the applicant/Respondent are the lawfully registered owners of LR No 330/55 (original No. 330/51/2).He explains that on or about December 2011 the Defendant /respondent unlawfully ,wrongfully and forcibly ejected the plaintiff/Applicant's guards at LR No 330/55 and installed their own guards thereby starting an illegal occupation that continues to date. A demand letter was addressed to the Defendant asking Defendant/Respondent to vacate the suit property and return the property in the same condition before the illegal entry which the Defendant/Respondent did not respond but instead went on to commence demolition on all building causing the Plaintiff/Applicant financial loss and anguish and has stated that

unless the Defendant is restrained he would suffer irreparable damage.

During the hearing on the 21st June 2012, the Applicants/Plaintiff's counsel stated that he had pursuant to the court order dated 12th June 2012 served the Respondent/Defendant's counsel by way of substituted service through the Daily Nation and proved the same by an affidavit of service sworn on 19th June 2012 by Mark Okinda. Attached to this affidavit of service is a copy of the newspaper advertisement of 16th June 2012. I am therefore satisfied that service has been effected and allow the application to proceed.

Counsel for the applicant/Plaintiff prayed for orders 3,4,6,7 and 8 of the Notice of Motion and stated that prayer 5 was for the main suit. He reiterated the contents of the Supporting Affidavit of Nanji Kalian Hirani and emphasized that the Plaintiff /Applicant is the owner of L.R No 330/55(original no. 330/57/2).He referred to the annexures that were annexed to the supporting affidavit which annexures were copies of the sale agreement, the indenture between Realty Brokers limited and Razor Investment Limited .He also referred to the indenture between Malvin Cyril Katzler and Realty Brokers Limited. Counsel went on to say that the Plaintiff/Applicant's case was that in December 2011the Defendant/Respondent's agents ejected its guards and took over the suit property and illegally occupy the suit land to date. the applicant/Plaintiff seeks an injunction against the Respondent/Defendant from constructing in the site. He also asked for prayer 4 because of the clarity of the title and said that the defendant/Respondent had no right to be in the land and prayed for injunction and also sought that the Defendant/Respondent be restrained from the site hence prayers 4 and 6.

Counsel for the Applicant/Plaintiff finally stated that because of the rush that they had in filing this application, they did not the written statements and therefore prays that order 7 be granted.

I have gone through the pleadings and the supporting affidavit carefully. I have also considered the submissions of the Applicant's counsel. This application is not opposed as the Respondent/Defendant has not filed any pleadings. The applicant has shown that he has the title to the property which has not been challenged by the Respondent; prima facie the applicant has case and is likely to suffer irreparable loss in the event that the orders are not granted as stated in the supporting affidavit. On the facts before me the balance of convenience tilts in favour of the applicant.

I grant orders 3, and 7 of the application dated 14th May 2012 as follows:

1. An injunction shall issue restraining the Defendant/Respondent whether by itself, its agents ,employees and/or servants from entering ,remaining, destroying ,construction on ,alienating and/or in any other way interfering with the Plaintiff/Applicant's property being L.R No 330/55 (Original No. 330/51/2)as well as buildings thereon pending the hearing and determination of this suit.
2. I waive the requirement under Order 3 Rule 2 of the civil procedure Rules 2010 that plaintiffs include signed statements of its witnesses at the time of filing suit and allow the plaintiff to furnish same fifteen (15)days prior to the trial conference.

I decline to grant orders 4, and 5 as they are mandatory orders which require evidence to be adduced for their just determination which can only be done during the hearing of the main suit. I shall not grant Order 6 at this stage as the applicant has not shown the need to have the police enforce it. Cost to the applicant.

Dated, Signed and Delivered on 20th July, 2012

R. OUGO

JUDGE

In the Presence of:-

.....For the Applicant

.....For the Respondent

..... Court Clerk