



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT (ELC) NO.394 OF 2010
FESTUS ONSARIGO MATIABE.....PLAINTIFF
VERSUS
DON OGALLO RIARO.....DEFENDANT

R U L I N G

1. Festus Onsarigo Matiabe hereinafter referred to as the applicant has come to this court seeking an order of interlocutory injunction restraining the defendant/respondent his servants, agents and employees from constructing, or occupying all that land parcel known as plot No. 40 in Ngei One River Bank Scheme Nairobi.
2. The applicant contends that he was given plot No. 40 within the Ngei One River Bank Scheme Nairobi. He took possession of the plot and constructed permanent residential houses and made periodical payments to the scheme in order to facilitate the issuance of a land title deed for the plot.
3. The applicant complains that the respondent Don Ogallo Riario who is the owner of the adjacent plot has wrongfully and fraudulently obtained a title deed for his plot with the deed plan encompassing that of the applicant. The defendant has now proceeded to demolish the buildings on the applicants plot purporting to fence his plot (thereby including that of the applicant).
4. The applicant now prays for an order of injunction maintaining that unless the respondent is restrained he will construct on the applicants plot. The Respondent objects to the application. He has filed grounds of opposition and a replying affidavit. The respondent maintains that he is the first registered owner of land reference No. 209/14441. He denies having wrongfully or fraudulently obtained the title. He explained that he was allocated the property through the Commissioner of Lands. The respondent denied having demolished the applicants' buildings and contends that the buildings were demolished by City Council employees after they visited the premises following the respondent's application for change of user of the property.
5. The respondents' disputes the applicant's certificate of plot ownership maintaining that it is not a recognized title of ownership document nor is the Ngei One River Bank Scheme registered. The applicant has sworn a further affidavit in which he swears that his attempts to search the title purportedly held by the respondent has been futile because the land office is demanding the original title. The applicant contends that such a demand implies that there exists no file at the Registry or that there is no title.

6. Having given the application due consideration and also considered all the submissions made before me, I find that the applicant has failed to establish a prima facie case with regard to his alleged ownership of Plot No. 40 Ngei One River Bank Scheme – Nairobi. The applicant has not established what kind of entity Ngei One River Bank Scheme – Nairobi is; whether it is a legal entity and whether it is capable of any land. Although the applicant claims it is a land buying company, there is no evidence of any incorporation.

7. On the other hand the respondent has demonstrated that he is the registered owner of LR. 209/14441. He has exhibited all necessary documents pertaining to his title. Although the applicant is questioning the legality of the respondent's title, he has not demonstrated in any way that the title is questionable. I find that prima facie the respondent is the lawful owner of the property in dispute and there is therefore no justification for issuing the orders sought.

8. Accordingly I dismiss the application dated 23rd August 2010 with costs.

Dated and delivered this 11th day of February, 2011

H. M. OKWENGU
JUDGE

In the presence of: -
Karanja & Khaminwa for the plaintiff
Ms Mucheru H/B for Ojienda for the defendant
B. Kosgei - Court clerk