



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ELC. 87 OF 2011

NAVUHI FARMS COMPANY LIMITEDPLAINTIFF

V E R S U S

ADAN ALIO BALLA1ST DEFENDANT
BENARD KERONGO ALIAS BOSIRE2ND DEFENDANT
STEPHEN KAMUNGE3RD DEFENDANT

R U L I N G

The Plaintiff filed this suit on 2nd March 2011 seeking a permanent injunction against the Defendants, general damages for trespass and costs. Its case is that it is the registered proprietor of L.R. No. 209/18218 situate in Embakasi in Nairobi and measuring about 0.669 Hectares. It produced letter of allotment dated 8th January 1999 (“DMM1”) issued by the Commissioner of Lands and title (“DMM2”) registered on 9th July 2010. It has undertaken construction and other development on the said property but on 12th February 2011 and 15th February 2011 the Defendants, through their agents and with Administration Police Officers, came here and found the Plaintiff’s workers undertaking construction. They ordered stoppage of the work, chased away the workers and threatened to burn and destroy the equipment and machinery that were being used. The Defendants were laying claim to the suit property but had no evidence to support the claim. This is what forced the Plaintiff to come to court. What is sought in the interim is a temporary injunction to restrain the Defendants, their servants and/or agents from encroaching, stopping construction or in any other way interfering with the suit property or the quiet and peaceful enjoyment the same by the Plaintiff.

The Defendants say that they are shareholders of Savanna Exporters Limited which on 23rd November 1998 was allocated the same parcel (“SK2”) by the Commissioner of Lands for which payment was made (“SK3”). They immediately went into occupation and have been thereon since. They have constructed a perimeter wall and other partial developments as shown in photographs which have been exhibited as “SK4”. They say that it was infact the Plaintiff who case to the suit property and demolished the main gate, a storage room and other developments and threatened to evict them. The Plaintiff has since come with the police and evicted the Defendants and demolished the perimeter wall. Regarding the evidence of ownership, the Defendants produced a letter from the Director of Survey in the Ministry of Lands (“EO2”) who had said that the Deed Plan No. 278/38 attached to the title (grant) produced by the Plaintiff was suspect. The letter says the Deed Plan for L.R.209/18218 is 278138. The exhibited Deed Plan, the letter continues, has never been verified by the Survey of Kenya since its original was referred to the Director of the Anti-Corruption Commission of Kenya (KACC) and has not been returned. Further, the verification serial number 10/7/2255 on the exhibited Deed Plan is meant to be Deed Plan for L.R. No. 12715/5997 as evidenced by Survey Plan No. F/R 341/54.

The Defendants opposed the application and sought, by their motion that the *ex parte* injunction that was granted to the Plaintiff on 3rd March, 2011 and which it had used to evict them and destroy the perimeter wall be discharged and/or set aside.

I heard Mr. Midikira for the Plaintiff and Mr. Kabue for the Defendants on the two applications.

The Plaintiff sought to show it is the registered proprietor of the suit property by producing title. This is title under the Registration of Titles Act (Cap. 281) whose section 23(1) provides the title holder with an absolute and indefeasible claim to the land (**Mbothu & 8 Others –Vs- Waitimu & 11 Others [1986] KLR 171**). However, the Defendants are saying that this parcel that was allegedly allocated to the Plaintiff on 8th January 1999 and registered in its name on 9th July 2010 had earlier on been allocated to their company, and therefore could not have been available for any further alienation. However, a letter of allotment by the Commissioner of Lands is an offer only (**Dr. Joseph Arap Ng'ok –Vs- Justice Moiwo Ole Keiwua And Others, Civil Application No. 60 of 1997 at Nairobi**). The person to whom such letter is issued has to meet the conditions stated therein and thereafter obtain title pursuant to the provisions under which the property is held. This is when he can say he owns the land. The letter of allotment to Savanna Exporters Ltd was issued on 23rd November 1998 and it was to be accepted in writing and the payments therein made, otherwise the offer was to lapse. The allottee made payment on 15th February 2010 which was well beyond the 30 days. The offer would therefore appear to have lapsed by the time. If that is true, the same parcel was available for alienation. If the Plaintiff was allotted the same parcel on 8th January 1999, that would appear to have been after the lapse of the offer to the Defendants' company.

The other way of looking at the dispute is that, the Plaintiff has title to the suit property whereas the Defendants have a letter of allotment. The Plaintiff would certainly have a better claim to the property. The Defendants say the title has a problem because of the Deed Plan which belongs to another title. The submission of Mr. Mudikira in answer to this was that his clients are not responsible for the issuance of title or any defects thereon. Under section 23 (1) above, the Plaintiff has a certificate of title which is conclusive evidence of ownership of the land. The title can only be challenged on the ground of fraud or misrepresentation to which it is proved to be a party. There was no allegation the Plaintiff was party to the defect on the title in regard to the Deed Plan. Under section 24, even where fraud or misrepresentation has been proved the remedy for the aggrieved party would be in damages. (**Maathai & 2 Others –Vs- City Council of Nairobi & 2 Others [2006] 1 KLR (EXL) 1988**).

The Defendants did not seek to find out from the Commissioner of Lands whether it is true he allotted the suit property to the Plaintiff, or from the Chief Registrar of Titles to find out if he issued the title the Plaintiff holds. They say they have been in possession and occupation of the land since 1998. They may be true, but the Plaintiff holds title to it. Such title entitles the Plaintiff to possess, occupy and use the suit property, and to have quiet and peaceful enjoyment of the same.

My provisional view is that the Plaintiff has demonstrated a *prima facie* case with a probability of success (**Giella –Vs- Cassman Brown & Co. Ltd [1973] EA 358**) and is entitled to a temporary injunction pending the hearing and resolution of this dispute. I allow the application filed on 2nd March 2011 in terms of prayers 3, 4 and 5 and dismiss with costs the Defendants application.

DATED AND DELIVERED AT NAIROBI

THIS 24TH DAY OF MAY 2011

A. O. MUCHELULE
JUDGE