



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC NO. 516 OF 2010

EMANGA NE SAMETA
INVESTMENTS LIMITED..... PLAINTIFF
VERSUS
TERESIA MUTEGI

..... 1ST DEFENANT

THE BOARD OF GOVERNORS
LANGATA HIGH SCHO..... 2ND DEFENDANT

RULING

There is a dispute involving a parcel of land known as Nairobi /Block 72/3174. The plaintiff brought this suit against the defendants jointly and severally on the basis that it was the registered proprietor of the said suit property upon which it had the objectives of embarking on developing the same. In that regard, it obtained all the necessary approvals for development and financing for the same. Sometime in the month of May, 2010 the District Land Registrar, Nairobi purported to revoke the plaintiffs title through a gazette notice without giving due regard to the procedures for revocation set out in the law. Aggrieved by the said revocation, the plaintiff moved the court by way of petition No. 224 of 2010 whereupon the court issued an order staying the implementation of the gazette Notice on 28th June, 2010.

That notwithstanding, the District Land Registrar on 12th October, 2010 issued a title upon the same property to the Permanent Secretary to the Treasury as trustee of Langata High School. Following the said action, the defendants have laid claim to the suit property and this has led to constant confrontations between the parties. The plaintiff has therefore prayed in this suit that there be a declaration that it is the bonafide legally registered owner of title No. Nairobi Block 72/3174 and that the certificate of lease issued to the Permanent Secretary to the Treasury as trustee to Langata High School on 12th October, 2010 is null and void and has no effect in law.

There is also a prayer that an order be issued to the Nairobi District Land Registrar to cancel the subsequent title aforesaid. The plaintiff also seeks a declaration that it is entitled to exclusive and unimpeded right of possession and occupation of the entire suit property. On that basis, a permanent injunction is sought to restrain the 1st and 2nd defendants whether by themselves, their servants or agents or otherwise howsoever from interfering with the plaintiff's quiet enjoyment of the suit property.

Finally there is a prayer for general damages for trespass and damaged property and costs for the suit. Alongside the plaint the plaintiff moved the court by way of Chamber Summons under Order XXXIX Rules 1(a) 2 and 9 of the Civil Procedure Rules and Sections 3A, and 63(e) of the Civil Procedure Act for interim injunction Orders in line with the prayers in the plaint.

On 29th October, 2010 an order was given to restrain the defendants until this application is heard inter partes. That is the basis of this ruling. The application is opposed by the defendants and there is a replying

affidavit sworn by Oscar Kiragu Beuttah who is the Chairman Board of Governors Langata High School. Upon directions that both counsel file written submissions to address the application, only the learned counsel for the plaintiff has complied. The defendants were given several opportunities by the court to file submissions but as at the time of writing this ruling they had not complied with the said order.

The pleadings on record show that the plaintiff purchased the property from the previous owners at a substantial sum of Kshs. 68,000,000/=. Thereafter a certificate of lease was issued in its name after due diligence had been conducted to confirm that the records at the Lands office reflected the previous owners as the proprietors. The plaintiff then obtained approvals from the Local Authority and the National Environmental Management Authority to develop the property. In addition, the plaintiff sought financial accommodation from Equity Bank Limited where upon the title was charged to the bank to the extent of Kshs. 45,000,000/=.

As at this point, it has not been alleged that at the time the plaintiff purchased this land it was aware of any interest, not only of the defendants but, of any other party. It has also not been alleged that there is any fraud or misrepresentation that can be blamed on the plaintiff. There is also no allegation that the plaintiff was aware of any encumbrances against that title. Indeed if such were the case, the title records at the Lands office would have reflected so. That being the case, the plaintiff may rightly be described as a bona fide purchaser for value without notice.

As at the time of revocation the District Land Registrar knew from the records that the plaintiff was the registered proprietor. There is no evidence however, that the plaintiff was given any Notice of the intended revocation. The plaintiff was therefore denied the right to be heard. The procedure of revocation of title is also a matter of law and the publication by way of Gazette Notice does not meet the threshold of land acquisition. Again, I have seen a letter of allotment in the name of the Permanent Secretary to the Treasury of Kenya and a Certificate of Lease in respect of the same property. As at the time of the said allotment and issuance of The Certificates of Lease, the property was in the name of the plaintiff, yet the District Land Registrar purported to transfer the same without consulting the plaintiff.

Some of the matters raised by the parties herein, belong to the province of the main hearing after issues have been framed. For now, based on the material presented, I am persuaded that the plaintiff has established a *prima facie* case with a probability of success to warrant the injunction orders sought in its application dated 28th October, 2010. If the order is not issued the plaintiff is likely to suffer irreparable loss as there is already evidence that it has charged the property with a view to developing the same at the sum of Kshs. 45,000,000/= which it continues to service monthly.

I am not in any doubt whatever in the findings hereinabove and even if I were, I would still hold that the balance of convenience tilts in favour of the plaintiff in view of the evidence it has presented. Accordingly the application is hereby allowed with costs to the plaintiff. The restraining orders shall remain in place until the main suit is heard and finalized.

Orders accordingly.

Dated, signed and delivered at Nairobi this 23rd day of June, 2011

**A. MBOGHOLI MSAGHA
JUDGE**