



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

ELC NO. 456 OF 2009

WAIRSON LIMITED PLAINTIFF
VERSUS
RICHARD MWANGI MACHIRA 1ST DEFENDANT
JOSPHAT MWAURA MBUGUA 2ND DEFENDANT
RUTH WAITHIRA MWAURA 3RD DEFENDANT
THE HON. ATTORNEY GENERAL 4TH DEFENDANT
CHIEF LAND REGISTRAR 5TH DEFENDANT
LAND REGISTRAR, THIKA 6TH DEFENDANT

RULING

This suit was first filed on 10th September, 2009. The plaintiff was subsequently amended and filed on 15th April 2010. Before the said amendment the plaintiff had prosecuted an application by way of Chamber Summons for interim injunction orders against the 3 defendants to restrain them from dealing with a property known as Ruiru Kiu/ Block 6/252.

In the pleadings the plaintiff stated that it is the registered proprietor of the said parcel of land having purchased the same from one Damaris Ngunjiri. It is in possession of a Certificate of Lease dated 24th August, 2001. On or about 19th August, 2009 the 2nd and 3rd defendants trespassed on the suit property and alleged that they had purchased it from the 1st defendant. It is the plaintiff's case that the plaintiff has never sold its leasehold interest in the said property to the 1st defendant and therefore any transfer of the land to the 1st defendant as alleged is illegal, fraudulent, null and void.

The amended plaint set out several particulars of fraud and collusion attributed to the defendants jointly and severally and in the end the plaintiff prays for an order that any certificate of lease to the 1st, 2nd and 3rd defendants be cancelled. There is also a prayer that there be a permanent injunction to restrain the 2nd and 3rd defendant by themselves, their employees, servants, agents and in any other manner whatsoever from trespassing, selling, charging, disposing, transferring, constructing any structure on the said parcel of land among other prayers.

After the issuance of interim injunction orders by this court, apparently the 2nd and 3rd defendants were evicted from the suit property. There is now on record an application by the 2nd and 3rd defendants seeking an order of reinstatement onto the suit property pending the hearing and determination of this suit. Both learned counsel appearing for the parties herein have file submission to address the two applications.

The 1st defendant herein is a key player in the transactions involving this parcel of land. It would appear however that, after the purported transfer to him by the plaintiff and the subsequent transfer from him to

the 2nd and 3rd defendants, he was not available for service of process in this suit. I say so because, the plaintiff has had to seek leave to serve the 1st defendant by way of substituted service which order was granted.

There is also a disturbing issue in these pleadings that the 1st defendant appears to use the names of Richard Mwangi Machira and or Richard Mwangi Wachira as and when the circumstances demanded. The discrepancy in the official documents, that is, the identity card and personal identification number certificate that is commonly known as the PIN is also disturbing. The plaintiff on the other hand has annexed a Certificate of Lease in respect of the same title no. Ruiru Kiu/Block 6/252 dated 24th August, 2001 which it says is still in its possession.

At this stage I observe the allegations of fraud, forgery and falsification of entries underline these pleadings. The inconsistencies are too many to leave this property unsecured. It is significant that the 1st defendant has not filed any reply to the plaintiffs' application neither has he filed any defence to the suit.

I am persuaded that the plaintiff has presented a *prima facie* case with a probability of success. In that case therefore, it is entitled to injunction orders sought in their application and the interim orders are therefore confirmed. I am unable to allow the 2nd and 3rd defendants to re-enter the suit premises because *prima facie*, their possession may have been based on falsified documents. The best I can do is to make an order that in the pendency of this suit the plaintiff shall not transfer this property to any other person.

The plaintiff shall also not carry out any development that may compromise the interest of the 2nd and 3rd defendants in the event their claim is found to be sustainable. The costs herein shall be in the cause.

Orders accordingly.

Dated, signed and delivered at Nairobi this 21st day of June, 2011

**A. MBOGHOLI MSAGHA
JUDGE**