

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC NO. 247 OF 2011

KENT J. GALVAN PLAINTIFF

VERSUS

JONATHAN GRANTHAM 1ST DEFENDANT

JERRY DAVID2ND DEFENDANT

SECURITY GRUARDS SERVICES LIMITED3RD DEFENDANT

RULING

The dispute herein involves a parcel of land known as LR NO. 11392/2 situate in Nairobi. In the pleadings the plaintiff claims ownership as the registered owner of the said property and complains that the defendants have been interfering with his peaceful possession and enjoyment thereof, and have threatened to forcefully evict him. He now seeks an order of injunction against the defendants to restrain them, their servants or agents from demolishing, developing, transferring or alienating the suit premises or any part thereof and in any other manner whatsoever evicting him from the suit premises.

The plaintiff obtained interim orders on 23rd June, 2011 which were confirmed on 4th July, 2011. There is now before me an application by the defendants for an order that, the orders made in favour of the plaintiff aforesaid be set aside and the application dated 27th May, 2011 be set down for hearing inter partes. There is also a prayer that the 1st defendant be granted leave to file and serve a replying affidavit in response to the plaintiff's application dated 27th May, 2011 together with a statement of defence. It is the 1st defendant's case that he and Gary Fallant are co- executors of the estate of Paul Trofferegen who is the registered owner of L.R. No. 11392/2 Lower Kabete, Nairobi.

The 1st defendant states that he was unaware of these proceedings as at 21st July, 2011 as he was not served by the plaintiff's process server as alleged in the affidavit of service. He was informed there had been attempts to take over possession of the property on the night of 15th July, 2011. It is his case that, he has a good defence which raises triable issues. The application is opposed by the plaintiff and grounds of opposition and a replying affidavit have been filed. Both learned counsel on record have filed written submissions which I have noted.

I have gone through the entire record before me and since this suit is yet to be heard in its entirety, I must guard against making any observations in this ruling that may prejudice the positions of the parties herein. However, I am constrained to observe at this stage that, there are material discrepancies one can clearly detect from the contents and particulars of the title documents relating to this property that have been filed on behalf of the plaintiff. I have also noted that there are material differences in the signatures of both the process server in the affidavits of service and also those of the plaintiff in the several affidavits he has sworn and filed in these proceedings. There is also a copy of the plaintiff's pass- port which bears his signature which has no resemblance whatsoever with the signature used by him in these proceedings. My observations stop there.

I note that the subject matter is land and where it is shown, like it has in this case, that suspicion underlines this proceedings then the court should intervene. I am persuaded that the orders sought by the 1st defendant should be granted and I accordingly do so.

The orders issued on 28th June, and 21st July, 2011 are hereby set aside and all consequential orders there under. The defendants shall have leave to file a replying affidavit within 14 days of today and serve the plaintiff. The plaintiff has corresponding leave to file the supplementary affidavit within 14 days of service by a defendants. The defendants also have leave to file a statement of defence within 14 days from the date of service of the supplementary affidavit by the plaintiff. The costs shall be in the cause.

Orders accordingly.

Dated, signed and delivered at Nairobi this 26th day of October, 2011.

A. MBOGHOLI MSAGHA
JUDGE