



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Election Petition 295 of 2010

JOHN NGARURO MUGO.....PLAINTIFF

VERSUS

ELIJAH ADUL.....1ST DEFENDANT

ANN ATIENO ADUL.....2ND DEFENDANT

RULING

At centre of this dispute is a property known as LR.No.Nairobi/Block 63/410 situate at Jamhuri Estate, Phase II, Nairobi. There have been a multiplicity of suits and applications in respect of the said suit property some of them involving the parties herein. What I have noted from the record before me is that, there are competing interests between the plaintiff on one hand, and the defendants on the other in respect of the ownership thereof.

Both parties, that is the plaintiff and the defendants, plead that they have valid titles respectively in respect of the suit property and that possession should be granted to them.

There are two applications before me, one dated 16th June, 2009 by the plaintiff against the defendants seeking injunction orders to restrain the defendants from trespassing, developing, alienating, selling, charging, transferring and evicting the plaintiff or in any other manner whatsoever dealing with or interfering with the plaintiff's ownership and quiet possession of the said property.

On 2nd October, 2009 Sitati J. granted orders in favour of the plaintiff which were however subsequently set aside by Onyancha J. on 2nd December, 2009 after the learned judge was satisfied that the defendants had not been served and given the opportunity to be heard on the application, before the orders were made against them. In effect, that application has not been heard and therefore is a subject of this ruling.

There is then the application by the defendants dated 6th April, 2010 seeking injunction orders against the plaintiff to restrain him, his agents, or servants from collecting rents, further letting and or dealing with the premises constructed on the suit premises pending the hearing of this suit. There is also an order sought that all rents collected from the units constructed on the suit premises be deposited in court until the hearing and determination of the suit.

There are other orders sought relating to the particulars of all tenants and leases to be supplied and that the premises be inspected by a qualified Land Economist/Registered Valuer to establish their current status, state of development and occupancy.

The contentious issues in these proceedings are wide and varied. I have already observed that both parties claim to be in possession of valid titles to the suit premises. It is clear to me that, most of the issues cannot be addressed by way of interlocutory applications. This is because at this stage, discovery, inspection and exchange of documents in addition to issues for determination have not been settled.

Faced with such a situation, the best the court can do in the circumstances is to preserve the subject matter pending the hearing of the main suit. I realize that the pleadings herein have been closed and subject to the parties' efforts and availability, the pretrial steps may be completed within the shortest time possible.

There have been allegations that the plaintiff continued to construct on the suit premises in the existence of a court order restraining him otherwise. I however note with respect that, the defendants did not come to court to site the plaintiff for contempt in that regard. As it is, premises have been constructed thereupon and the plaintiff is said to be reaping from the said premises unjustly hence the application by the defendants relating to rent.

Both parties allege that they are purchasers for value without notice and that is a very serious triable issue. That being the case, it may not be appropriate to restrain the plaintiff from an investment that he believed belonged to him. The best I can do as I have said, is to preserve the subject matter. To do so, I order that the plaintiff who is now said to be in possession shall not alienate the premises or sell the same or in any other manner deal with the same including charging to the detriment of the defendants' interest. This order shall be registered against the title until this suit is heard and determined or further order of the court. Each party shall bear their own costs of these applications. Orders accordingly.

Dated, signed and delivered at Nairobi this 28th day of September, 2010.

A. MBOGHOLI MSAGHA

JUDGE