



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU
Civil Case 135 of 2007

MAYFAIR HOLDING LTD PLAINTIFF

-VERSUS-

ANNE AKECH CHRISTENSEN

THE DISTRICT LAND REGISTRAR KISUMU DEFENDANTS

Coram:

Mwera J.

P. J. Otieno for the plaintiff

D. Otieno for the 1st defendant

RULING

The present chamber summons dated 3.10.2007 was brought under O39 rr. 1, 2, 3, 4 CPR for 4 orders. But at the time of hearing only one prayer remained – prayer 3 – to issue a temporary injunction against the defendants in respect of land parcel no. KISUMU MUNICIPALITY BLOCK 12/125 until the suit herein is finally determined.

From the affidavit and submissions by Mr. P. J. Otieno, (due annexures were before court: AG1 to 10 inclusive) the subject land was sold to the plaintiff by one Kiplangat Bundotich as per a sale agreement of 13.11.2002. Bundotich had a government lease which passed to the buyer (plaintiff company) on 27.11.2002. A certificate of search said as much together with the green card. Then the plaintiff made due payments to the Commissioner of Lands and the local authority. By another green card (annexture AG 8, 4.12.2002) it was demonstrated that eight (8) days after the property was transferred to the plaintiff, one Kiprotich Korir got himself registered over the same land. He eventually sold it to the 1st defendant on or about 28.5.2007 – long after the plaintiff published a notice of caveat emptor over the land and even notified the local land registrar of land on 9.5.2007, that it was not for sale to anybody by somebody other than the plaintiff.

From all the above the plaintiff's position was that it had made out a prima facie case to justify an injunction in its favour and the court did not have to examine whether compensation by damages would do or on balance of convenience who was favoured. The orders should issue. The plaintiff was left with the impression that some serious mischief was afoot which gave the land to Kiprotich long after it was alienated to Bundotich and then itself. The land could not be alienated twice and to different parties. Several cases were cited in support of the plaintiff's stand.

Mr. D. Otieno on the hand considered the chamber summons under review as incompetent because there was no prayer for an injunction in the plaint. That his client properly entered into a sale agreement with Kiprotich Korir on 28.5.2007 over this land which was transferred to the 1st defendant. Damages would compensate the plaintiff and as such an injunction should not issue against the 1st defendant. The plaintiff noticed the 1st defendant on the land and then took too long to seek the injunction order. In the meantime the 1st defendant had expended over Ksh 600,000/= to repair/renovate the house on the subject plot. The court should therefore see aspects of mal fides and “no clean hands” on the part of the plaintiff.

Again cases were cited to support the 1st defendant. There was no appearance on behalf of the 2nd defendant (the local land registrar) so the court rose to consider its ruling.

All matters here that require inquiry by evidence will await the trial herein. That includes the parallel titles issued to the plaintiff and the 1st defendant for lease over the same piece of land by the 2nd defendant. That is a mystery and this court says no more.

The plaintiff seeks restraint of injury of any kind to its land or right thereof, posed by the 1st defendant. She got on the land and carried out work there. It was earlier sold to the plaintiff who held a title to it w.e.f. 27.11.2002. By the course the 1st defendant took, she got hers on 12.6.2007. By priority of registration it is only fair and proper that the plaintiff's title and apparent rights over BLOCK 12/125 take precedence as of now as parties move to trial where each will place its case for investigation.

In sum, the injunction sought is granted. The plaintiff to undertake in writing as to damages in the next 21 days.

Costs to the plaintiff.

Orders delivered on 27.5.2009.

J. W. MWERA

JUDGE

JWM/hao