



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS

Civil Suit 2367 of 2007

HEXMEAD INVESTMENTS LTD.....PLAINTIFF/APPLICANT

VERSUS

ABDULLAHI SALO TULU.....1ST DEFENDANT/1ST RESPONDENT

ROBERT MIGOSI KAMONDE2ND DEFENDANT/1ST RESPONDENT

R U L I N G

1. The application before court is the Chamber Summons dated 28/08/2009 brought under Order XXXIX Rules 1, 2, 2A, 3 and 9 of the Civil Procedure Rules, Sections 3 and 3A of the Civil Procedure Act Cap 21 Laws of Kenya and all enabling provisions of the law seeking interlocutory orders of injunction to restrain the 2nd Defendant by himself, his servants or agents or otherwise howsoever from entering into, depositing building materials, erecting any structures or in any other way interfering with the Plaintiffs ownership and possession of the parcel of land known as L.R. No. 209/10908 Grant No. IR 65230 until this suit is heard and determined.
2. The application is premised on the grounds that the Applicant is the registered owner and entitled to the possession of that parcel of land known as LR No. 209/10908 Grant No. 65230 (the suit property) situate in the City of Nairobi, and on the further grounds that on or about April 2007, the Defendant wrongfully entered upon the suit property and erected structures thereon and the Defendants did not stop such construction until they were served with Summons to Enter Appearance together with copy of the plaint. The Applicant avers that there are threats from the Defendant for continued construction unless the order sought herein is granted.
3. The application is also supported by the affidavit dated 28/08/009 and sworn by Lawrence K. Karuri. The deponent says he is the Manager of the Plaintiff company, Hexmead Investments Ltd and that he has the authority to make and swear the affidavit. The deponent reiterates the averments on the face of the application to the effect that the Plaintiff is the registered owner of the suit property as per annexure "LLK 1" to the Supporting Affidavit. This annexure is a copy of the Certificate of Title issued to Kiburine Progressive Enterprise Limited on 18/01/1995. Kiburine Progressive Enterprise Limited changed its name to Hexmead Investments Limited under the Certificate of change of Name dated 1/12/1995. The Plaintiff's case is that the Defendants are trespassers on the suit property and that they

(Defendants) are interfering with the Plaintiff's possession and quiet enjoyment of the suit property, hence these proceedings.

4. The application is opposed by the sworn affidavit of Robert Migosi Kamanda dated 17/09/2009. The Defendant's main ground of opposition is that they have been on the suit property since 1993 and have since constructed both permanent and semi permanent structures thereon, among them a school that is duly registered under the Ministry of Gender, Sports, Culture and Social Services. The Defendants deny that they entered the suit property only in the year 2007 and allege that by virtue of having entered the suit property in 1993, the Defendants have acquired title to the suit property for over 12 years with the full knowledge of the Plaintiff's management and directors without any interruption of possession and occupation of the suit property.

5. At the hearing of the application, Mr. Kepha Ombati of Kepha Ombati & Co. Advocates appeared for the Plaintiff/Applicant. He submitted that the Plaintiff obtained interlocutory judgment against the 1st Defendant on 19/06/2008 when the said 1st Defendant having been duly served with Summons to Enter Appearance and copy of plaint failed to answer within the stipulated time. Mr. Ombati also submitted that the 2nd Defendant herein started depositing building materials on the suit property in or about August 2009. Mr. Ombati submitted that on the strength of Section 23 of the Registration of Titles Act, Cap 281 Laws of Kenya, the proprietorship of the suit property is vested in the Plaintiff. Mr. Ombati also submitted that on the strength of the provisions of the above Section and on the basis of the case of **Moya Drift Farm Limited vs Theuri [1973] EA 114** and the **Giella –vs- Cassman Brown & Co. Ltd. [1973] EA 358**, the Plaintiff was entitled to a grant of the order sought.

6. In response to Mr. Ombati's submissions, Mr. Ochako for the Defendant submitted that the Defendants have acquired the suit property by way of adverse possession and that in the circumstances, the Defendants should not be enjoined from using what belongs to them. Mr. Ochako also submitted that the Certificate of title by itself is not sufficient evidence to prove the Plaintiff's case and that in any event, the deponent of the supporting affidavit has not annexed to his affidavit a copy of the authority given to him by the Plaintiff company to swear the affidavit.

7. In the plaint dated 11/12/2007 and filed in court on 24/12/2007, the Plaintiff avers that it is a limited liability company duly incorporated in Kenya under the Companies Act and that it is the registered owner and entitled to the possession of the suit property. The Plaintiff avers that the Defendants have unlawfully entered upon the suit property and prays for judgment against the Defendants jointly and severally for:-

(a) An order directing the defendants to vacate and give possession of the parcel of land known as L.R. No. 209/10908 Grant IR 65230 to the plaintiff.

(b) An order of eviction of the defendants from the parcel of land known as L.R. No. 209/10908 Grant No. IR 65230.

(c) A permanent injunction to restrain the defendants by themselves, their servants or agents or otherwise howsoever from remaining on or continuing in occupation of the parcel of land known as L.R. No. 209/10908 Grant No. I.R> 65230.

(d) Damages

(e) Costs of and incidental to this suit.

(f) Interest on (d) and (e) above at court rates.

(g) Any other or further relief that this Honourable Court may deem fit to grant.

8. The 1st Defendant's defence dated 4/06/2009 denies the Plaintiffs averments and alleges that the Plaintiff has no locus standi to bring the suit herein. The 1st Defendant avers that he bought off the parcel of land known as Plot No. 90/91 Embakasi Nairobi from M/s Moto Moto Mukuru Centre Self Help Group, (now a Co-operative Society) in the year 2001 and has since occupied that plot (which is not necessarily LR No. 209/10908 IR 65230 Nairobi). The 1st Defendant wants the Plaintiff's suit dismissed with costs.

9. I have now considered the competing views expressed in this case. I note that there is evidence by the Plaintiff/Applicant that it is the registered proprietor of the suit property. On the other hand, neither of the two Defendants has placed before this court any evidence to show how and when they became registered proprietors of the suit property. On the basis of the above, and on the basis of the provisions of Section 23 of the RTA, it seems highly probable that the Plaintiffs claim against the Defendants will succeed. It is also apparent that unless the Defendants are enjoined by an order of this court, they will continue to interfere with the suit property by entering thereon, depositing building materials and erecting structures thereon and in any other way interfering with the Plaintiff's quiet enjoyment, ownership and possession of the suit property. The Defendants produced a Certificate of Registration of Huruma Self Help Group under the Ministry of Gender, Sports, culture and Social Services. Such a document however falls short of demonstrating that the Defendants, and in particular the 2nd Defendant herein is the registered proprietor of the suit property.

10. The upshot of what has been stated above is that the Plaintiff's application has merit. Accordingly the application is allowed, and I order that the 2nd Defendant by himself his servants or agents or otherwise however be restrained by an order of interlocutory injunction from entering into, depositing building materials, erecting any structures or in any other way interfering with the Plaintiff's ownership and possession of the parcel of land known as LR No. 209/10908 Grant No. I.R. 65230 pending the hearing and determination of this suit. The Plaintiff/Applicant shall have the costs of this application.

Orders accordingly.

Dated and delivered at Nairobi this 27th day of November, 2009.

R.N. SITATI

JUDGE

Delivered in the presence of:-

Mr. Mutai (present) for the Plaintiff/Applicant

Mr. Ochako (present) for the Defendants/Respondents

Weche – court clerk