



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)
Environmental & Land Case 508 of 2009

EDWARD NJUGUNA KANGETHE.....PLAINTIFF/APPLICANT

VERSUS

JOHN MWANGI NGUGI.....1ST DEFENDANT/RESPONDENT

STEPHEN GITHINJI2ND DEFENDANT/RESPONDENT

RULING

1. The application before court is the Chamber Summons dated 9/10/2009 expressed to be brought under Order XXXIX Rules 1, 2, 3 and 9 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act and all other enabling provisions of the law for **ORDERS:-**

1. *THAT this application be certified urgent, be heard exparte in the first instance and service of the same be dispensed with.*

2. *THAT the Defendants herein, their agents, servants and/or employees or any person duly authorized by them to act on their behalf be restrained forthwith by a temporary injunction from wasting and/or interfering with the Plaintiff's quiet possession, accessing and/or any dealing in any way with that parcel of land known as LR No. 209/2489/28 situated at Ngara, Mwangiriika Crescent off Desai Road in the city of Nairobi pending interparte hearing and determination of this application.*

3. *THAT the Defendants herein, their agents, servants and/or employees or any person duly authorized by them to act on their behalf be restrained forthwith by a temporary injunction from wasting and/or interfering with the Plaintiff's quiet possession, accessing and/or any dealing in any way with that parcel of land known as LR No. 209/2489/28 situated at Ngara Mwangiriika Crescent, off Desai Road in the city of Nairobi pending the hearing and determination of this suit.*

4. *THAT this Honourable Court be pleased to issue an order directing the Administration Police (AP) Ngara, to help in enforcing the order of this Honourable Court.*

5. *THAT the costs of this application be provided for.*

6. *THAT such other and/or further relief be granted as this Honourable Court may deem fit and just to grant in the circumstances of this matter.*

2. The application is supported by the affidavit of **Edward Njuguna Kangethe** sworn on 9/10/2009. The deponent of the supporting affidavit is also the Plaintiff/Applicant. He says that on or about 1/12/2008, the 1st Defendant entered into a sale agreement with the Plaintiff for the sale of a parcel of land known as LR No. 209/2489/28 situate at Ngara, Mwangiriika Crescent off Desai Road in the city of Nairobi. That thereafter on or about 10/02/2005 a transfer was duly executed between the 1st Defendant/Respondent and the same was duly registered on 10/02/2009 as Entry No. 4 under Presentation No. 598 on the Certificate of Title being Grant No. IR 105414. The deponent further says that in or about the month of March 2009, he was astonished to find trespassers and strangers sent by the Defendants herein denying the Applicant access to the suit land. The Plaintiff/Applicant seeks an injunction against the Defendants in terms of prayer 3 of the application. The Applicant also wants the court to order the Administration Police (AP) Ngara to assist him in enforcing the order of injunction.

3. Both the application and the Summons to Enter Appearance were duly served upon the 2 Defendants on the 16/10/2009 in the presence of the Plaintiff/Applicant. Neither Defendant has filed an answer to the Plaintiff's claims.

4. The court has now considered the application and the grounds upon which the application is premised. The Plaintiff/Applicant has produced in evidence a copy of the Certificate of Title in respect of LR No. 209/2489/28, Deed Plan 272587 dated 24/11/2006. Under Entry No. 3 thereof, the suit property was transferred to John Mwangi Ngugi on 24/12/2008 under Presentation No. 2789 of the same date. John Mwangi Ngugi (1st Defendant) paid Kshs.6,500,000/=. On the 11/02/2009, the suit property was transferred to the Plaintiff herein for Kshs.8,000,000/=. The Defendants have not countered the Plaintiff's allegations on title.

5. Under Section 23(1) of the Registration of Titles Act, RTA, the Certificate of Title adduced in evidence by the Plaintiff/Applicant herein is conclusive evidence that the Plaintiff/Applicant is the absolute and indefeasible owner of the suit property; subject only to the encumbrances, easements restrictions and conditions in the title or endorsed thereon. A look at the copy of Certificate of Title does not contain details of any encumbrances, easements restrictions and conditions to which the Plaintiff/Applicant would be subject. Nor does it show that the Defendants are the registered proprietor of the suit property at all times material to this suit.

6. In the premises of the above findings, the Defendants have no right whatsoever to interfere with the Plaintiff's quiet possession of the suit property until the contrary is proved. It is also clear that the Plaintiff has established a prima facie case with a probability of success. Accordingly, I would and do hereby allow the Applicant's application dated 9/10/2009 and make the following orders:-

(1) THAT the Defendants herein, their agents, servants and/or employees or any person duly authorized by them to act in their behalf be and are hereby restrained forthwith by a temporary injunction from wasting and/or interfering with the Plaintiff's quiet possession, accessing and/or any dealing in any way with that parcel of land known as LR No. 209/2489/28 situate at Ngara, Mwangiriika Crescent, off Desai Road in the City Council of Nairobi pending the hearing and determination of this suit.

(2) The Administration Police (AP) Ngara shall help the Plaintiff/Applicant in enforcing the order of injunction.

(3) Costs of this application shall be borne by the Defendants/ Respondents.

It is so ordered.

Dated and delivered at Nairobi this 13th day of November, 2009.

R.N. SITATI

JUDGE

Delivered in the presence of:-

Miss Khaemba E (present) for the Plaintiff/Applicant

No appearance for the Defendants/Respondents

weche – court clerk