



REPUBLIC OF KENYA



KENYA LAW
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**Kangara v Wambua & 3 others (Environment & Land Case
E012 of 2022) [2022] KEELC 14552 (KLR) (31 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14552 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E012 OF 2022
CA OCHIENG, J
OCTOBER 31, 2022**

BETWEEN

MARTIN MUTHII KANGARA PLAINTIFF

AND

THOMAS MAINGI WAMBUA 1ST DEFENDANT

MWANZO DEVELOPMENT COMPANY LTD 2ND DEFENDANT

DIRECTOR OF CRIMINAL INVESTIGATION 3RD DEFENDANT

THE LAND REGISTRAR, MACHAKOS COUNTY 4TH DEFENDANT

RULING

1. What is before court for determination is the plaintiff's notice of motion application dated the February 25, 2022 where he seeks the following orders:
 1. Spent
 2. Spent
 3. Spent
 4. Spent
 5. That pending the hearing and determination of this suit, this honourable court be pleased to issue an order barring 3rd defendant/respondent from interfering, investigating and/or in any other way dealing with all that land registered as Mavoko town block 12/46.
 6. Spent
 7. That the cost of this application be paid by the respondents.



2. The application is premised on the grounds on the face of it and the supporting affidavit of Martin Muthii Kangara. The plaintiff contends that he purchased land parcel number Mavoko town block 12/46 hereinafter referred to as the 'suit land', vide a sale agreement dated the January 24, 2022 between the 1st defendant and himself. He explains that the 1st defendant had bought the suit land from the 2nd defendant and the same was transferred to him on January 3, 2022. Further, that the suit land had been subdivided into ten (10) plots being LR No 12175 to 12184 but the 1st defendant could not register the same due to a restriction registered by the 4th defendant over complaints raised by the 2nd defendant to the 3rd defendant. He confirms selling some of the plots to third parties who are demanding their title deeds.
3. The 1st defendant in response to the application filed a replying affidavit where he deposes that he is a director of Mbukoni Holdings Ltd. He explains that the 2nd defendant's director Willy Mutie in 2003 approached him for a credit facility of Kshs 50, 000 and he undertook to deposit the original title of the suit land as security. Further, that on 9th January, he intimated that the 2nd defendant intended to sell the suit land at a consideration of Kshs 450, 000 and that the Kshs 50,000 credit facility would be deemed to be part payment of the consideration. He confirms that a sale agreement between Mbukoni Holdings Ltd and the 2nd defendant was drafted and executed. Further, he explained how the consideration was paid and that the final payment of Kshs 100,000 was made on July 14, 2005. He claims Mr Willy Mutie was evasive in effecting transfer to Mbukoni Holdings Ltd and even interfered with any economic activities made on the suit land. He states that in November, 2021 when the plaintiff approached Mbukoni Holdings Ltd to purchase suit land for Kshs 20,000,000, subdivide it, into plots and sell, they removed the caution, transferred the suit land from the 2nd defendant to himself and sold it to the plaintiff. He reiterates that he obtained consent to transfer the suit land from Athi River land control board on December 1, 2021 and obtained a new title on January 3, 2022. Further, that he obtained a special consent of the land control board to subdivide the suit land on January 5, 2022 and have yielded possession of the said land to the plaintiff. He insists the plaintiff is the bona fide purchaser for value.
4. The 2nd defendant opposed the application by filing a replying affidavit sworn by Mutie Willy its director who deposes that they are strangers to the plaintiff and 1st defendant. He contends that the 2nd defendant is the registered proprietor of the suit land and disputes the agreement between the plaintiff and 1st defendant. Further, that the Agreement dated the January 9, 2003 is between the 2nd defendant and Mbukoni Holdings Ltd. He avers that there was no transfer between 2nd defendant to 1st defendant. He argues that the plaintiff did not purchase the suit land from 1st defendant for any monetary value because the purported Sale Agreement dated the January 24, 2022 was merely designed to steal the said suit land. Further, that transfer to 1st defendant was made on January 3, 2022 while consent to subdivide was issued on January 5, 2022 and by January 24, 2022, the suit land had already been subdivided into ten (10) plots. He avers that, when the 1st defendant attempted to register the Mutation, he was informed and he made a complaint to the DCI to investigate the fraud as he was in possession of the original title of the suit land issued to him on September 10, 1997. Further, that the police registered a caution on the suit land and commenced investigations which is still ongoing but instead of cooperating with them, the plaintiff proceeded to file this suit.
5. The 3rd and 4th defendants opposed the application by filing a Replying Affidavit sworn by SGT Kennedy Kusimba an officer attached to 3rd defendant who is conversant with the matter. He deposes that on February 10, 2022 Mr Willy Mutie lodged a complaint at the DCI Headquarters Ref No CID/GEN/COMP/6/11/ 2022 regarding the suit land. He explains that Mr Willy Mutie claimed ownership and possession of the suit land and explained that the plaintiff had visited the said land and given his caretaker six hours to vacate it. He avers that Mr Willy Mutie confirmed that the 2nd



defendant purchased suit land from one Kioko Nzeve who was member no 671 of Drumvale Farmers' Cooperative Society Ltd. Further, that Drumvale Farmers Cooperative Society Ltd confirmed this position. He avers that Mr Willy Mutie confirmed their company's attempt to sell the suit land in 2002 to Mbukoni Holdings Ltd and the said Agreement was revoked due to failure by the buyer to pay the purchase price. Further, that the original title disappeared from the firm of Messrs Mbulo & Co Advocates. He confirms that they requested the 4th defendant to place a restriction over the suit land until investigations were complete. Further, they oppose the removal of the restriction as sought by the plaintiff.

6. The plaintiff filed a further affidavit reiterating his claim and insisting he purchased the suit land for Kshs 20,000,000. Further, he has paid Kshs 4,000,000 and the balance of Kshs 16,000,000 would be paid upon transfer. He states that he has taken possession of the suit land and sold certain resultant subdivisions to third parties. He denies colluding with the 1st defendant to defraud the 2nd defendant. He further denies being called by the police to record statements. He contends that the 2nd defendant has not demonstrated the steps he undertook to recover the lost title. Further, that he has never threatened the caretaker of the 2nd defendant.
7. The application was canvassed by way of written submissions.

Analysis and Determination

8. Upon consideration of the instant notice of motion application including the respective affidavits, annexures and rivaling submissions, noting that most prayers are spent since they were sought pending the outcome of this application, the only issue for determination is whether the court should issue an order barring the 3rd defendant from interfering, investigating and/or in any other way dealing with all that land registered as Mavoko Town Block 12/46.
9. From the averments, in the respective affidavits, I note the plaintiff purchased the suit land from Mbukoni Holdings Ltd. Further, the 1st defendant is a director of Mbukoni Holdings Ltd. The plaintiff confirmed he is yet to pay the full purchase price. The 1st defendant confirmed he transferred the suit land from Mbukoni Holdings Ltd to himself before selling to the plaintiff. I note the transaction between Mbukoni Holdings Ltd and the 2nd defendant commenced in 2003. The 1st defendant has not explained whether the 2nd defendant executed the transfer forms. Further, it is not clear how the transfer was effected from the 2nd defendant to Mbukoni Holdings as the 1st defendant has not presented transfer forms duly executed by the 2nd defendant to that effect. Further, the 1st defendant proceeded to subdivide the plots and the plaintiff has sold resultant plots to third parties. I have highlighted these issues and to my mind, I opine that the DCI indeed has a legal mandate to institute investigations since the 2nd defendant still holds the original title. The plaintiff sought for removal of the restriction which is registered against the suit land.
10. It is trite that restrictions are placed on a title to protect a substratum of the suit, and since there are certain anomalies I have flagged above, I opine that the restriction should subsist pending the outcome of this suit so that the suit is not rendered an academic exercise.
11. In the foregoing, I find the instant notice of motion application unmerited and will disallow it.

Costs will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 31ST DAY OF OCTOBER, 2022

CHRISTINE OCHIENG



JUDGE

