



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

Civil Case 1446 of 2007

SURYAKANT KANTILA RAVAL..... 1ST PLAINTIFF

INDUAMTI SURYAKANT RAVAL 2ND PLAINTIFF

VERSUS

SADRUDIN MOHAMMED 1ST DEFENDANT

MULTIPACKAGING LIMITED 2ND DEFENDANT

RULING

APPLICATION TO BE STRUCK OUT OF

THE PROCEEDING 6 MARCH 2008

I: Background

1. The originating summons herein seeks for orders of Adverse Possession on land parcels LR 209/958/8 in the defendants No.1's name.
2. The two parcels of land including LR209/958/3 were original one parcel land held in tenant in common.
3. The 1st defendant disposed of land parcel LR209/958/7 to the 2nd defendant. He retained the second portion being LR209/958/8. He then disposed of this portion sometime in 2005. The former portion was disposed of in 2004.
4. During the time of sale of the land parcel it was discovered that the beacon showed the boundary was not in a straight line but at an angle that encroached on the defendants 1 and 2's land from that of plaintiff 1 and 2. A dispute arose and consequently, the said boundary was subject of Hccc1117/2004 and this present case.
5. Whilst the suits were still pending defendants No.1 sold the second portion of land. He then came to court by way of application chamber summons 6.3.08 seeking to be struck out of this matter as he is no longer the registered owner.

Application 6 March 2008

6. The reasons given to the court is that the defendant No.1 admits that the plaintiff had sued him by an originating summons of 5 November 2004 seeking inter alia

“a declaration that the land the subject matter of the suit be deemed to be long to them under the doctrine of adverse possession and an order to restrain the defendants from in any way alienating the said land in breach of the plaintiffs rights as owners in adverse possession”

That he further admits that he is the registered owner of LR209/958/8 that is adjacent the plaintiffs land and 2nd defendants land.

7. A portion of the land measuring 0.019 had been encroached that is now claimed by plaintiff 1 and 2 from portions of land belonging to defendant 1 and 2.

8. The defendant No.1/applicant now informs the court that he has since sold and transferred the parcel of land to third parties. The sale occurred and was duly registered on 16 June 2005. The defendant 1 has since become a stranger to this suit and prays that his name be struck out of the proceeding or the suit be dismissed.

9. In reply the plaintiff/respondent stated that the transfer and or sale occurred during the pendency of the existing suit. The respondents relied on the doctrine of Lis Pendence at the time of filing this suit the plaintiff was the registered owner at all times.

II: Opinion

10. The title held by the parties is under the Registration of Titles Act Cap.280 Laws of Kenya. Under the Transfer of Property Act section 52, the doctrines of Lis Pendence apply. This doctrine simply means that, at the time a suit is pending, no transfer and or sale of the said land in question should be sold or transferred. If this is done the same is done at the peril of the parties buying and selling the same.

11. I decline to grant the application. The 1st defendant is to remain a party in these proceedings. The proposed parties to be enjoined are the new ones and this should be undertaken.

12. I dismiss the application with costs to the plaintiff/respondent and 2nd respondent.

DATED THIS 9TH DAY OF JULY 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

J.K. Nyaribo instructed by J.K. Nyaribo & Co. Advocates for the plaintiff

E.G. Jaramba instructed by Singh Gitau & Co. Advocates for the 2nd defendant/respondent –present

Oshwal J.O. instructed by Mohammed Madhani & Co. Advocates for the 1st defendant/respondent-present