



IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 992 of 2006

1. Land & Environmental Law Division
2. Subject of Main Suit – Land LR Ruiru Kiu Block 3/94

Double Allocation of land by 1st defendant

Kahawa Sukari Ltd.

3. Application for an Injunction dated 19th September 2006

- 1) 1st Defendant Kahawa Sukari Ltd.

Allocated disputed land parcel to Plaintiff in 1989 and 2nd Defendant in 1997 - (9 years later)

- 2) 2nd Defendant sells land to 3rd Defendant in 2004 July.

(7 years later)

- 3) 3rd Defendant constructs house worth Kshs. 7 million in value within 1 year 2 months

- 4) Plaintiff discovers occupation of 3rd Defendant. Files application 19.9.2006 for injunction and main suit.

- 5) Status of case.

- i) 2nd Defendant holds title dated 6.10.1997

- ii) 3rd Defendant has constructed on land.

No transfer of title given to his name.

- iii) Plaintiff discontinues suit against 2nd Defendant

Thinking she had died but she is still alive.

4. 3rd Defendant objects to injunction. There will be irreparable loss caused to him if allowed.

5. Held

- i. Injunction to issue restraining 3rd Defendant from parting with possession of land Parcel LR No. RUIRU KIU Block 3/94 pending determination of suit.
 - ii. Application for prayers against 2nd defendant – restraining her from transferring suit property dismissed as suit against 2nd defendant withdrawn – discontinued (16 October 2006)
 - iii. Costs to the plaintiff
6. Case Law - Nil
7. Advocates

C. Goi instructed by Gichuki King'ara & Co. Advocates for applicant/plaintiff - present

D.O. Olonde for Odera Olonde & Co. Advocates for the defendant - present

DICKSON ELIJAH NGUMI WAICHUHI.....1st PLAINTIFF

VERSUS

KAHAWA SUKARI LIMITED.....1st DEFENDANT

EUNICE NJOKI NGUNJIRI.....2nd DEFENDANT

MOSES NYONGESA.....3rd DEFENDANT

RULING

1. Background to Application for an Injunction dated 19th September, 2006

1. The main suit herein in concerns land ownership M/s. Kahawa Sukari Ltd., the original owner of land LR Ruiru Kiu Block 3 within the Ruiru Municipal Council, advertised for sale land for development. The plaintiff, Dickson Elijah Nguni Waichuki, applied for land and was allocated plot No. 249 Kahawa Sukari measuring 0.9 ha which he duly purchased for ksh.50,000/- on the 23.3.1989. the land was still in a block and he was not issued with a title deed. He nonetheless paid Kshs.23,450/- being costs of processing the title and Kshs.3,550/- being the surveyors costs.

2. The plaintiff took no action on this land till the year 2000 when he intended to develop the land. In the year 2006 he still had not developed the land but visited the site only to discover that a structure had gone up. On further inquiry he discovered that the 1st defendant M/s Kahawa Sukari Ltd. Had actually allocated the same price of land to the 2nd Defendant, one Eunice Njoki Ngunjiri. From the application and reply it appears that Eunice Njoki Ngunyuni was the holder of a title under the RLA Cap.300 Laws of Kenya for 99 years as of 1 June 1995.

The said Eunice Njoki Nguyuni (the 2nd Defendant herein) then sold the suit premises for Kshs.700,000/- to the third defendant Moses Nyongesa. The transfer of the property from Eunice Njoki Ngunjiri had not been effected but a form was duly prepared dated 23 November 2005.

3. In the meantime the 3rd Defendant had completed constructing a building, which building he did construct within 1 year and 2 months of the years 2004. he took possession of the suit premises in the year 2005. The plaintiff discovered this construction having been put up in the year 2006, which is the year that he filed this suit seeking prayers inter alia for injunction from restraining the said 2nd and 3rd defendant from making a claim on the suit land. He then filed an application for an injunction.

II. Application dated 19th September, 2006

4. The application of 19th September, 2006 sought orders that:

i) This honourable court be pleased to issue a temporary injunction restraining the 2nd defendant respondent whether by herself, her servants/agents and or employers or howsoever from transferring all that property known as LR No. RUIRU KIU Block 3/94 pending hearing and determination of this suit.

5. This prayer can no longer stand because on the 16 October 2006, the plaintiff discontinued the suit against the 2nd defendant. There is therefore no case against her. When I asked the plaintiff advocate the reasons of discontinuing the suit, he said that the 2nd plaintiff had passed away. The advocate for the 3rd Defendant stated she was well and alive and had not passed away. Whatever the case may be, the former 2nd defendant personally or her estate require to be party to this suit to establish the truth behind the title.

6. The prayer is nonetheless struck out.

7. The other prayer being that:-

“this court be pleased to issue a temporary injunction restraining the 2nd Defendant/Respondent whether by herself, her servants agents & or employees, or whosoever from transferring all that property known as LR No. RUIRU KIU Block 3/94 pending and determination of the suit.”

8. The status of the suit premises is that the defendant No.3 has constructed and completed a building situated on the same. The transfer of the title from the former 2nd defendant to himself is not yet been done. The 3rd Defendant took a risk by constructing on premises on land not legally transferred to his name. The issue herein is one of ownership of LR No. RUIRU KIU Block. How did the 2nd defendant come to possess the same whilst the plaintiff held the correct papers. The key lies with the 1st defendant Kahawa Sukari Ltd and the former 2nd defendant. This requires a trial to be heard on the same.

9. I find herein that a prima facie case has been made out by the applicant that his rights to the suit land may be infringed. I further hold that there has been no land transfer made to the 3rd defendant and therefore pending the determination of this suit, there be an injunction to issue restraining the 3rd defendant from parting with the possession and or transferring suit premises to his name or any other persons name till the determination of this suit.

10. I award the cost of this suit to the applicant/plaintiff.

Dated this 29th day of May, 2007 at Nairobi.

M.A. Ang'awa

JUDGE

29.5.2007

Advocates:

C. Goi instructed by Gichuki King'ara & Co. Advocates applicant/plaintiff- present

D.O. Olonde instructed by Odera Olonde & Co. Advocates for the defendant/respondent -present