



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 336 of 2007

1. Land and Environmental Law Division
2. Subject of main suit – Land ownership
 - i) LR NO.12220 Langata, Nairobi 5 acres
 - ii) Plaintiffs applicant proposed purchaser in 1977 for Ksh.80,000/-
 - iii) Took physical possession of suit premises in 1978.
 - iv) Sub-divided the suit premises in 1998 and sold a portion for ksh.2.5 m.
 - v) During the sale transaction in 1991. 1 and 2 defendants purchased same property and sold to 3rd defendant
 - vi) Plaintiff places caveat on 2.6.81
 - vii) 3rd defendant registers as owner of land
 - viii) Plaintiffs claims – this is a fraud as all directors and parties are related to each other.
 - ix) Plaintiff filed suit Hccc3625/91 seeking orders of specific performance.
 - x) Suit dismissed for lack of prosecution.
- 12.7.05 Mutungi, J.
 - xi) Plaintiff files Originating Summons. Suit Hccc1216/06 seeking to extend caveat to land. The suit was withdrawn
 - xi) Plaintiff claims overriding interest under S.30 (f) RLA Cap.300 and section 38 of Limitation of Actions Act.
3. Application for injunction 16 July 2007
4. Application opposed

5. Held: Injunction to issue

6. Case law

Related files

Hccc1467/91

Hccc1180/06 (OS)

Hccc1215/06 (OS)

Hccc3625/91

7. Advocates

P. Kaluma for Lumumba Mumma & Kaluma & Co. Advocates for the defendant/applicant-present/absent

MI Kibaya for Ndungu Njoroge & Kwach Co. Advocates for the plaintiff/respondent-present/absent

COL ALEXANDER M. MWANGANGI.....APPLICANT

VERSUS

VINCENT KAMBO1ST DEFENDANT

FLOWER POWER LIMITED2ND DEFENDANT

ELART ENTERPRISES3RD DEFENDANT

DR. TAITA A. TOWETT.....4TH DEFENDANT

ELIZABETH CHEROTICH TOWEETT.....5TH DEFENDANT

CHRISTO KATSANTONI CHRISTIE.....6TH DEFENDANT

RULING

I: Application dated 16 July 2007 seeking restraining orders against the defendants from entering, cutting trees, demolishing structures and buildings, selling transferring alienating or in any way dealing with LR No.12220 situate in Langata Nairobi.

A: Background of application

1. The plaintiff herein Col. Alexander M. Mwangagi entered into a sale agreement with Dr. Taita A. Towett the 4th defendant herein who is the husband of the 5th defendant for sale of 5 acres of land in Langata at a purchase price of Ksh.80,000/- in 1977.

2. Whilst the land department were sorting out the issue of

sub-division and title the plaintiff claims that some time in 1991 the said 4 defendants sold the same parcel of land to 1 and 2 defendants who in turn sold it to the 3rd defendant through a change over the land.

3. The plaintiff had, in 1978, taken possession of the land. He sub-divided the suit premises to a 3rd party for a consideration of Ksh.2.5. million.

4. On realizing the sale transaction to and 1 and 2 defendants and thereafter to the 3rd defendant, the plaintiff at once filed suit against 6 defendants (He later withdrew the suit against the 6th defendant). He also filed this injunction to restrain parties from entering onto the suit property. The suit he had filed was Hccc3625/91 that sought orders for specific performance. This suit was dismissed by Mutungi J on 12 July 2005 for want of prosecution. The plaintiff filed this present suit seeking orders of injunction on the grounds that the whole transaction was made under fraud between the defendants to deprive him the said property.

5. He took precaution and filed an originating summons seeking for the caution filed by him against the land be extended.

6. In effect the related further cases before this court are Hccc1216/06, Hccc1180/06, Hccc1215/06(OS) and Hccc3625/91.

7. I did call up for these files to peruse but the numbers were not corresponding apart from one file being Hccc1215/06. The rest of the files bore names of other parties. I am therefore not able to tell what contents of the other suits are.

8. The plaintiff prays for an injunction. His rights have been contravened and if the said fraud is proved to be correct, he would suffer irreparable loss.

II: Finding

9. I find that an injunction do issue against all the five defendants, themselves and or their agents whereby they are accordingly restrained from entering the said suit land till the finalization of this suit. For ease of reference they are to vacate the land and remove all their belongings forthwith.

10. The defendants are not to part with possession, sale and or in anyway use the title of the land and interfere in anyway with the status of the land. That the title be deposited to court within 14 days.

11. I find that the plaintiff will indeed suffer irreparable loss.

12. I further order that the plaintiffs do provide security in the event he may not be successful in his claim by way of damages by a Bank Bond and or Insurance Bond to the tune of Ksh 5 million to be deposited to court within 14 days.

13. It is so ordered accordingly.

14. Costs of this application is awarded to the applicant/plaintiffs to be paid by defendant/respondent. The respondent be at liberty to apply.

Dated this 3rd day of October 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

P. Kaluma for Lumumba Mumma & Kaluma & Co. Advocates for the defendant/applicant-present/absent

M. Kibaya for Ndungu Njoroge & Kwach Co. Advocates for the plaintiff/respondent-present/absent