



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 1359 of 2007

STEPHEN KIHARA MUCHUI PLAINTIFF

VERSUS

THE ATTORNEY GENERAL & 3 OTHERS DEFENDANT

RULING

The Plaintiff along with filing the plaint, filed an application by way of Chamber summons brought under Order XXXIX Rule 1 of the Civil Procedure Rule and all other enabling provisions of the law.

It seeks two prayers namely:

- a. That the 4th Defendant be restrained from disposing, transferring selling charging or in any other manner dealing with the two parcels of land known as NGONG-NGONG 4735 (hereinafter referred to as (The Two suit Parcels”)) until the final disposal of this suit.**
- b. THAT the 4th Defendant also be restrained from entering taking possession or in any other manner interfering with the Plaintiffs quiet enjoyment and use of the said two suit parcels until the final disposal of this suit.**

The application is supported on the grounds set forth on its face and on an affidavit sworn by the Plaintiff on 30th August, 2007.

The plaint seeks prayers for rectification of the titles for the two properties namely Ngong/Ngong/4735 (referred to as the ‘suit properties’).

As per the facts as averred, the Plaintiff was issued with a Title Deed on 6th September, 1989 in respect of the suit properties.

Everything was well till 10th August, 2006 when the Plaintiff was informed that some fraudster was trying to defraud a named person by pretending to be the owner of the suit property and capable of selling the same. The alleged fraudulent deal was aborted. However, the Plaintiff called Kajiado Land Registry and informed the Registrar Mr. Nyantika about the said incident, who confirmed that the two green cards in respect of the suit properties were not interfered with.

On 11th August, 2006, he wrote a letter to the Land Registrar Kajiado confirming the telephone conversation. He thereupon fenced the properties and placed a sign board “**Not for Sale**”.

On 30th January, 2007 he sent his conveyancing clerk to Land Registry for registration of some transfers and sent with him his photograph and Identity card to be kept in the files of suit properties. However, he was for rude shock when he was informed that the suit properties are transferred in the names of the 4th Defendant herein.

Next day he visited Kajiado Land Registry and a restriction was lodged by the Registrar on suit properties.

On perusal of the respective files of the suit properties it was discovered that despite the confirmation that the restriction was placed by the Registrar on the basis of the earlier complaint. The letter dated 11th August, 2006 from the Applicant was missing in the file transfer documents for the alleged transaction were not in the files, consents from the Land Control Board were also not on the file. It was averred further that the purported title deeds used for the alleged transfer did not bear ID number.

After his official complaint to the Permanent Secretary, Ministry of Lands, an investigation was carried out. The Plaintiff annexed two letters from Chief Land Registrar and District Officer, Ngong Division dated 15th May, 2007 and undated respectively. They confirmed that the consents from the Land Control Board, Ngong Division in respect of the purported transfers were not obtained. In the first letter it is specifically stated that the purported transfers were void ab initio and thus it can be a ground to expunge the said registrations from the record of the Land Registrar. The two green cards annexed do also show that the consideration column thereof is not filled in.

In the replying affidavit sworn by the 4th Defendant, it is in short stated that he bought the suit properties after response to the advertisement seen in the newspapers and met one person introduced as Stephen Kihara Muchui which he agreed that he was not the Plaintiff. He entered into a Sale Agreement after visiting the suit properties and paid the purchase price, and thereupon was issued with the Title Deeds.

It is very interesting to note that despite given notice to show the consent and stamp duties etc by the Plaintiff and also despite the fact that in the special condition B in the sale agreement the documents like rates clearance certificate, duly executed transfer, Land Control Board consent, duly completed and signed forms for valuation of stamp duty were supposed to have been availed none of those documents is produced by him.

From the cursory look at the Agreement for sale, it shows that both parties' Advocates are M/s Gakuru and Co. Advocates, however the document itself does not show it is prepared by the said firm.

From the evidence of confirmation as stated by the offices of Registrar of Land and also from the Divisional Land Control Board, the plaintiff has shown a prima facie case with probability of success of his case. The suit properties are owned by him and in his possession. To allow any disturbance to his alleged proprietary rights at this stage will result in serious harm and damages to the Plaintiff. Even the third aspect of **Geila vs. Carsman Brown and Co. Ltd. (1973) E.A.C.A.)358**, i.e. balance of convenience, is in favour of the Plaintiff.

It is trite law that when the application is brought under order XXXIX Rule 1 there is no requirement that the suit in which the temporary injunction is sought must be one which seeks any restraining orders. (see **Kihara vs. Barclays Bank K. Ltd (2001) E.A.L.R. Vol.2, 420**)

This suit involves dispute of the property and hence, the application is competent.

In the premises, I allow the Chamber Summons dated 30th August, 2007 and grant two prayers sought for therein.

As the costs are not asked for, I shall not make any orders.

Dated and signed at Nairobi, this 26th November, 2007.

K.H. RAWAL

JUDGE

26.11.07