



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

Civil Case 266 of 2005

BELGO HOLDINGS LIMITEDPLAINTIFF

VERSUS

JOHN ARMSTRONG NJOGU1ST DEFENDANT

JAMES NJUGUNA MIIRA2ND DEFENDANT

FRANKLIN KAMATHI KAMAU3RD DEFENDANT

GODFREY NGATTIA NJOROGE4TH DEFENDANT

WILLIAM KIPLANGAT KOGO SOMOEI.....5TH DEFENDANT

JOSEPH SULEIMAN MWANGI MAINA6TH DEFENDANT

THE REGISTRAR OF GOVERNMENT LANDS7TH DEFENDANT

RULING

By its application of the 12.8.2004 the Applicant seeks inter alia the following orders:-

(iii) That pending the hearing and determination of this suit the Seventh Defendant be restrained from accepting for registration or to refuse to register any document or instrument made or executed by or on behalf of the First to the Sixth Defendants purporting to deal in any manner with or in any connected with the suit properties;

(iv) That pending the hearing and determination of this suit the First to Sixth Defendants or any one of them (or and their agents or servants) be restrained from entering upon or trespassing on the suit properties or from interfering in any manner whatsoever with the Plaintiff's legal right to quietly possess and use the said premises and the house erected thereon;

(v) That pending the hearing and determination of this suit an order be made directing the First to Sixth Defendants (and their agents or servants) to vacate the suit premises and the house situated thereon and to hand over possession of the same to the Plaintiff;

(vi) Alternatively pending the hearing and determination of this suit a person acceptable to this Court be appointed as a Receiver of the suit properties with powers to manage, protect and preserve the suit properties, to collect the rents and profits thereof and to employ security guards

and deploy them at the suit properties.

The application is based on the ground that the first to sixth Defendants have no right title or interest in the suit properties and is supported by the affidavit of Akber Abdullah Kassam Esmail sworn on the 12.8.2004.

In that affidavit he depones that he is a director of the Applicant Company and is authorized to make the affidavit on its behalf. He depones to the fact that the Applicant acquired title to the suit premises by a conveyance of the 27.7.1995 made between Lakestar Developments of the one part and the Applicant of the other. A copy of the deed of Indenture is annexed. He also refers to a conveyance of the 28.10.2002 in favour of the 6th Defendant, which he claims is a forgery. In aid of this averment he refers to an affidavit sworn by the 6th Defendant on the 25.2.2004 in Civil Suit No.507 of 2003 (OS). That suit was brought by the Applicants therein for orders against inter alia the Applicant herein and the said Mr. Maina that they had acquired a title by adverse possession to the suit properties. In that suit the Applicants therein were held to have become the legal owners of the suit properties. As I understand it, the order extinguished the title of the 6th Defendant therein to the suit premises.

Subsequently the order granted to the Applicant in that suit was set aside together with a court order that had marked that suit as settled.

Mr. Njiru in opposition submitted that the Applicant herein had not shown it had a title to the suit properties and that the 5th and 6th Defendants herein are innocent purchaser for value. He referred to an affidavit of M. J. Kamere of the 5.6.2002 paragraph 6. Clearly there are conflicting facts and allegations made which can only be determined at a full hearing of this suit.

However, the Applicant alleges that is the true owner of the suit properties and that the conveyance in favour of the 6th Respondent is a forgery or is fraudulent and void. Either way this is an issue, which must be resolved at the hearing. If the allegation turns out to be correct then it would be wrong for the title to the suit premises to be alienated or altered in any way. I therefore, give an order in terms of prayer (iii) of the application.

I, however, decline to make the orders sought for in prayers (iv) and (v) of this application as to grant them would be pre-empting any finding in due course by the Judge hearing the case. Until the true position is clarified it is best that the position on the ground remains the same.

I will not at this present time make any order with regard to the appointment of a receiver, as there is no evidence before me that any acts of waste are being carried out which might justify the appointment of a receiver.

In the result there will be orders accordingly with costs in cause.

I also order that this suit be fixed for hearing in the Registry on a priority basis as the matters in dispute by their nature require to be resolved speedily.

Dated and delivered at Nairobi this 3rd day of May 2006.

P. J. RANSLEY

JUDGE