



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
CIVIL CASE NO. 1070 OF 1999

IQBAL SINGH GHALE & 4 OTHERS PLAINTIFFS

VERSUS

SANDWORTH PRINTING AND PACKAGING LTD..... DEFENDANT

RULING

This is the defendants application for the main order that the order of injunction given against defendant on 27.5.99 be discharged on the grounds that:

1. Defendant is the registered owner of L.R. No. 209/2555 Nairobi vide a Grant No. IR 66945 issued by Department of lands on 9.4.99.
2. The said suit property was allotted to defendant by a letter of Allotment dated 22.8.99 and in consideration of defendant paid a stand premium of Kshs 828,000 and she 82,800 as annual rent.
3. Defendants title to the suit property is valid and properly issued by authority concerned.

Plaintiff opposes the application on the grounds contained in the grounds of opposition filed on 13.10.99.

Let me reproduce three of the grounds thus

1.
2.
3. Defendants application is premised on and supported by documents that are believed to be forgeries and the subject of criminal proceedings.
4. That no new matters or issues have arisen to warrant the discharge, variation or setting aside of the order of injunction.
5. Defendant is not and cannot be the duly registered owner of the suit property where there in existence a valid title documents for suit property.

I have considered the counsels submissions respective affidavits and documents filed by the parties. Reliefs sought in the plaint by plaintiffs are:

1. A declaration that plaintiffs are the true and lawful owners of L.R No. 209/2555 known as Ghale House on Moi Avenue Nairobi

2. A declaration that the purported alteration of Grant of suit property to defendant is illegal and void.

3. An order of permanent injunction to restrain defendant from selling, alienating, disposing of, charging or in any manner interfering with title to or possession of plaintiffs property.

An interlocutory injunction in terms of prayer 3 above was given on application, on 30.7.99 together with other orders to safe guard maintenance of status quo.

I do not know whether defendant has been served with summons to enter appearance but it has not filed a defence or counter claim.

It is true that defendant had not filed grounds of opposition and replying affidavit to the plaintiffs application but defendant had two counsels who appeared for him. Indeed, Mr. Avedi advocate appeared for him on the hearing date and opposed the plaintiffs application on behalf of defendant. So the orders defendant seeks to discharge were given after an interpartes hearing.

The dispute is about ownership of L.R. No. 209/2555 - known as Ghale house with a massive building. As I pointed out in the Ruling given on 30.7.99. the property is a leasehold property and leasehold expires in the year 2002. The property was registered in the name of plaintiffs before the dispute started. All that defendant is saying is that it was allocated the same plot by commissioner of land s vide a letter of allotment dated 2.8.98 and that after paying the required Dues he was given a lease for 99 years from 1.9.98.

Plaintiffs are saying that all theses documents of title are forgeries plaintiff refer to a letter dated 12.5.99 from principal Registrar of titles saying that the new Grant (defendants) is fake and signature appended to it are not genuine. In Nairobi Criminal Case No.827/99, Mr. Joseph Mwai Kinyanjui - managing director of Defendant is charged, inter alia, with the offence of making a false document to wit. Title No, L.R 66945 purporting it to be genuine and to have been issued by land Registrar Nairobi.

Mr. Kinyanjui Mwai explains in the supporting affidavit that the Government allocated the suit property to him. He does not explain in what circumstances in the previous application I referred to letter dated 5.5.99 from defendants advocates explaining the circumstances under which the land was allocated to defendant. In that letter, defendant advocates explained that plaintiffs Grant was revoked by Government after plaintiff failed to pay requisite premium and land rates and that there after the land was auctioned to defendant and there after defendant was given a Grant. The Registrar of titles by the letter dated 12.5.99 informed plaintiffs advocates that Government does not auction private property for default in land rates.

It is the law that Government does not allocate private property to other people. Indeed the constitution protects the right to property. Government can only allocate unalienated Government land.

The suit property was allocated by Government in 1903. It was developed with a massive building known as Ghale House. The lease hold has not expired It is improbable that the Government which indeed respects the constitution could have illegally taken away plaintiff property with a huge building without any compensation or compulsorily acquiring the property and give it to the defendant in any case, defendant does not explain the circumstances under which he was allocated alienated and development private property.

By the application, the defendant is indirectly asking court to determine the ownership of the property. The court cannot so at this stage. The dispute about the ownership will be decided at the hearing of the suit. That is why I have refrained from commenting on the strength of each parties. But considering that the suit property was not unalienated Government land at the time defendants says it was allocated to him; that the property have been for many years been owned by plaintiffs family who has developed the property with a massive old building; that there is no documents to show that the Government compulsorily acquired the property and paid plaintiffs compensation before alleged allocation to defendant and since it is alleged that defendants documents of title are forgeries and Government has

prosecuted the managing Director of the defendant, it is only just that status quo should be maintained by allowing the plaintiff to continue occupying and using the suit premises just as they did before the alleged allocation to defendant. The orders made on 30.7.99 were intended for that purpose. It is unjust in the above circumstances to hand over the building to defendant and take it away from plaintiffs and thereby disturb the status quo before the alleged allocation before the suit is heard and determined.

Consequently, I dismiss the defendants application with costs to plaintiff.

E. M. Githinji
Judge
22.3.2000

Mr. Kariuki present

Mr. Mutuli present

Parties present

Mr. Kariuki

I apply for certified copy of the Ruling. Defendant intends to appeal.

Order: Ruling to be typed, copy to be given to Mr. Kariuki