



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC CIVIL CASE NO. 7 OF 2020 (OS)

IN THE MATTER OF : LAND SITUATED IN NAIROBI COUNTY KNOWN AS L.R NO.12425 AS COMPRISED IN GRANT REGISTERED AS NUMBER LR 32622

=AND=

IN THE MATTER OF : LIMITATION OF ACTIONS ACT (CAP 22)

AND=

IN THE MATTER OF : LAND CONTROL ACT

=AND=

IN THE MATTER OF : LAND ACT NO 6 OF 2012

=AND=

IN THE MATTER OF : THE LAND REGISTRATION ACT 2012

=BETWEEN=

ZIPPORAH MUTHONI NDUNGU.....1ST PLAINTIFF

GERALD GATHAIYA NDUNGU.....2ND PLAINTIFF

PETER NYORO KIARIE.....3RD PLAINTIFF

BELINDA TERESIAH MUMBI.....4TH PLAINTIFF

DAVID MONG'ARE.....5TH PLAINTIFF

ANN. WESONGA.....6TH PLAINTIFF

(suing on their own behalf and behalf of all squatters in the L.R 12425)

=VERSUS=

NATIONAL BANK OF KENYA LTD.....1ST DEFENDANT

ORBIT CHEMICALS INDUSTRIES LTD.....2ND DEFENDANT

GEONER SYSTEMS LIMITED.....3RD DEFENDANT

SACHEN CHANDARIA.....4TH DEFENDANT

GEORGE ONER.....5TH DEFENDANT

JEREMIAH OLWE OLIECH.....6TH DEFENDANT

JOHN NJUGUNA CHEGE.....7TH DEFENDANT

BONIFACE MWANZIA MUSEMBI.....8TH DEFENDANT

THE CHIEF LAND REGISTRAR.....9TH DEFENDANT

PRINCIPAL SECRETARY,
MINISTRY OF LANDS.....10TH DEFENDANT

INSPECTOR OF GENERAL,
NATIONAL POLICE SERVICE.....11TH DEFENDANT

PRINCIPAL SECRETARY,
MINISTRY OF INTERIOR.....12TH DEFENDANT

NAIROBI CITY COUNTY GOVERNMENT.....13TH DEFENDANT

RULING

1. By an amended Chamber Summons which at the same time is titled Notice of Motion dated 2nd June 2020, the Plaintiffs/Applicants sought the following orders; -

1) Spent

2) *That, pending the hearing and determination of this Application inter-partes a conservatory order by way of stay and or injunction do issue restraining the 1st, 2nd 3rd 4th, 5th, 6th, 7th, 8th, 9th, and 10th, Defendants/ Respondents, their servants, officers, agents or any other person assigned or with their authority to interfere with in land parcel No. Nairobi Block 264/1249, Nairobi Block 263/1251, Nairobi Block 263/1248, Nairobi Block 263/1247, Nairobi Block 263/1287, Nairobi Block 263/1288, Nairobi Block 263/1257, Nairobi Block 263/1258, and Nairobi Block 263/1259, situate in LR 12425 in any way.*

3) *That, pending the hearing and determination of this Application inter-partes a conservatory order by way of stay and or injunction do issue restraining the 1st, 2nd 3rd 4th, 5th, 6th, 7th, 8th, 9th, and 10th, Defendants/Respondents, their servants, officers, agents or any other person assigned or with their authority from carrying out any excavation, eviction, demolition, construction or trespassing on land parcel No. Nairobi Block 264/1249, Nairobi Block 263/1251, Nairobi Block 263/1248, Nairobi Block 263/1247, Nairobi Block 263/1287, Nairobi Block 263/1288, Nairobi Block 263/1257, Nairobi Block 263/1258, and Nairobi Block 263/1259, situate in LR 12425 in any way and/ or doing anything prejudicial to or interfering with the Applicants possession of the land and/or property in LR 12425.*

4) *That, pending the hearing and determination of this Application inter-partes a conservatory order by way of stay and or injunction do issue restraining the 1st, 2nd 3rd 4th, 5th, 6th, 7th, 8th, 9th, and 10th, Defendants/Respondents, their servants, officers, agents or any other person assigned or with their authority to interfere with in land parcel No. Nairobi Block 264/1249, Nairobi Block 263/1251, Nairobi Block 263/1248, Nairobi Block 263/1247, Nairobi Block 263/1287, Nairobi Block 263/1288, Nairobi Block 263/1257, Nairobi Block 263/1258, and Nairobi Block 263/1259, situate in LR 12425 in any way.*

5) *That, pending the hearing and determination of this Application inter-partes a conservatory order by way of stay and or injunction do issue restraining the 1st, 2nd 3rd 4th, 5th, 6th, 7th, 8th, 9th, and 10th, Defendants/Respondents, their servants, officers, agents or any other person assigned or with their authority from carrying out any excavation, eviction, demolition, construction or trespassing on land parcel No. Nairobi Block 264/1249, Nairobi Block 263/1251, Nairobi Block 263/1248, Nairobi Block 263/1247, Nairobi Block 263/1287, Nairobi Block 263/1288, Nairobi Block 263/1257, Nairobi Block 263/1258, and Nairobi Block 263/1259, situate in LR 12425 in any way and/ or doing anything prejudicial to or interfering with the Applicants possession of the land and/or property in LR 12425.*

6) *That, the Honourable Court be pleased to give further orders it may deem fit and convenient in the circumstances of this case.*

7) *That, the OCPD Embakasi Police Station ensure compliance failing which the 11th and 12th Defendants be held in contempt of Court.*

8) *That, costs be provided for.*

2. Before Subdivision, the suit properties were under LR No. 12425 which was 38.54 hectares. This property had been granted to the 1st Respondent on 9th October 1978. The property was later transferred to the 2nd Respondent on 10th March 1987. Since the transfer of the property to the 2nd Respondent, there have been a number of suits which have been filed touching on the same. This suits are right from the Chief Magistrate's Court all through to the Court of Appeal.
3. The Applicants contend that they had been on the suit properties even before the same was transferred to the 2nd Respondent. They were on the suit properties as squatters who obtained their respective portions from Kware-Mukuru Kwa Njenga Jua Kali Association. The Applicants argue that when the property was transferred to the 2nd Respondent, the 2nd Respondent did not interfere with their possession. The 2nd Respondent only used to issue occasional threats of eviction against them.
4. In 2015, when His Excellency the President of the Republic of Kenya visited Mukuru Kwa Njenga , he gave a directive that the occupants of the property be left to occupy it and that the Ministry of Lands gives the occupants titles . The President also directed that the 2nd Respondent be considered for alternative allocation of land. The President's directive was communicated to the Ministry of Lands through a letter by the Chief of Staff and Head of Public Service Mr Joseph Kinyua.
5. The Applicants contend that some persons purported to implement the directives of the President but they ended up subdividing the property which they allocated to persons other than the squatters who were occupying the land. Those who were allocated the subdivided portions have since demolished some of the structures put up by the Applicants and their other members. There are also threats to demolish more structures. The Applicants' complaints to the authorities and the police have not been acted upon as the authorities seem to be acting in concert with the new purchasers of the subdivided portions.
6. The Applicants contend that the transfer of the property from the 1st Respondent to the 2nd Respondent was fraudulent and that as they have been on the land without any interruptions for a period of over twelve years, they are entitled to be registered as proprietors by way of adverse possession. It is on this basis that they are seeking for injunctive orders as they pursue their claim for adverse possession.
7. The 1st to 6th Respondents have opposed the Applicants application. The 1st Respondent opposed the application through a replying affidavit sworn on 3rd June 2020 by Chrispus Maithya. The 2nd to 6th Respondents opposed the application through a replying affidavit sworn on 28th October 2020 by George Oner Ogallo. The 1st Respondent states that it was the registered owner of the property. The Central Bank of Kenya later on imposed regulations which prohibited banks from owning land other than where their premises were. This forced the 1st Respondent to advertise for bids to purchase the property. The 2nd Respondent became the lowest bidder and the property was sold to it.
8. The 1st Respondent states that as at the time property was transferred to the 2nd Respondent, the same was vacant and that the 2nd Respondent indeed took possession. The property was later invaded by squatters as there was a caveat registered by the Registrar of Titles forbidding any dealings. This caveat became the subject of Nairobi HCCC No. 876 of 2004.
9. The 1st Respondent contends that in view of the orders emanating from HC Misc. Application No. 784 of 1996, the Applicants are asking this court to sit on appeal something which cannot happen. In this misc. application, Justice Ojwang (as he then was) found that the 2nd Respondent was the true owner of the property. He stated that no one was to remain on it unless with consent of the 2nd Respondent. He also ordered eviction of those who were in the property with assistance of OCS Embakasi.
10. The 1st Respondent further contends that the Applicants cannot seek to claim the land as purchasers and at the same time seek it under adverse possession. The 1st Respondent therefore argues that this application is an abuse of the process of court which ought to be dismissed.
11. The 2nd to 6th Respondents contend that the ownership of the property by the 2nd Respondent was affirmed by the High Court in HC Misc.Application No.784 of 1996 and that there has never been a review or appeal from this ruling. The 2nd Respondent's ownership was further affirmed in HCCC No.876 of 2004 where justice Nambuye (as she then was) stated that the property belonged to the 2nd Respondent and that the Registrar of titles had no business registering a caveat against the title.
12. The 2nd Respondent could not proceed to evict the Applicants as per the decision in HC Misc.Application No. 784 of 1996 as there were pending proceedings for formal proof in HCCC No. 876 of 2004 which was later appealed against to the Court of Appeal. The 2nd to 6th Respondents therefore argue that time could not run against the title holder as there were proceedings going on in the courts. Time only started running after conclusion of civil appeal No.32 of 2014 which was determined on 22nd March 2019.
13. The 2nd to 6th Respondents contend that the Applicants cannot claim to have been in quiet possession from January 2003 as there have been active litigations in court. They contend that the 2nd Respondent has been in firm control of the property and that is why it sold portions of it which it transferred to third parties who have taken possession. They further argue that the title annexed by the Applicants is non-existent as it was surrendered upon subdivision and that the applicants have not sued the third parties whose land they seek to be registered as owners.
14. I have considered the Applicants' application as well as the opposition to the same by the 1st to 6th Respondents. I have also considered the submissions by the Applicants and those of the Respondents. The only issue for determination is whether the Applicants have demonstrated that they have a prima facie case to warrant issuance of injunction. The materials placed before the court show that the Applicants were given certificates of plot ownership by Kware – Mukuru Kwa Njenga Jua Kali Association between 2001 and 2016. As at the time of transfer of ownership of the property, the property was not occupied. The squatters came in after the Registrar of titles registered a caveat prohibiting any dealings. The property remained unoccupied thus attracting invaders.

15. Soon after the transfer, the 2nd Respondent as owner filed suits touching on the suit property. One of these suits was HC Misc. Application No.784 of 1996. When a ruling was delivered by Justice Ojwang (as she then was), he was clear that the owner was the 2nd Respondent and directed that no one was to remain on the land unless with permission of the 2nd Respondent. Later there was HCCC No. 876 of 2004 which went to the Court of Appeal. In this case Lady Justice Nambuye (as she then was), observed that invasion was as a result of the caveat by the Registrar of Titles.

16. The Applicants have maintained that they are squatters on the land. They state that they have acquired the suit property by way of adverse possession. This being the case and in view of the fact that there have been cases filed soon after the 2nd Respondent became the registered owner, and given that some of the Applicants have already been evicted, I do not see what prima facie case the Applicants have disclosed to warrant an injunction.

17. The 2nd Respondent appears to have been in firm control of the property. The 2nd Respondent has subdivided and sold the same to third parties some of whom have taken possession, Admittedly, some Applicants have had their buildings demolished and this is pursuant to lawful orders which had been given in HC Misc.Application No. 784 of 1996. Even if it is found that those evicted are entitled to the portions they were occupying, they can be compensated in monetary terms.

18. I have no doubt in my mind as to consider this matter on a balance of probabilities. Courts before me have pronounced themselves on the issue of ownership and given eviction orders which could not be implemented as there were active cases going on and a caveat by the Registrar of Titles. The property known as LR No. 12425 does not exist and proceedings cannot be based on the same. I therefore find that the Applicants' application lacks merit. The same is dismissed with costs to the 1st to 6th Respondents.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 22nd day of March 2021

E.O.OBAGA

JUDGE

In the Presence of :-

M/s Kavagi for Mr Muchiri for 1st Defendant/Respondent

Mr Wachakana for 1st to 6th Plaintiffs /Respondents

Mr Moindi for Mr Munyalo for 8th Defendant/Respondent

Court Assistant: Okumu

E.O.OBAGA

JUDGE