



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 97 OF 2017

JOSEPH KARIUKI NJUGUNA.....1<sup>ST</sup> PLAINTIFF/APPLICANT

ESTHER WANJIKU NDUNGU.....2<sup>ND</sup> PLAINTIFF

VERSUS

MWANZO DEVELOPMENT COMPANY LIMITED...DEFENDANT

RULING

1. Vide a Notice of Motion dated 26<sup>th</sup> August, 2020 that was brought pursuant to the provisions of Sections 1A, 1B & 3A of the Civil Procedure Act, Order 45 and 51 of the Civil Procedure Rules 2010, the 1<sup>st</sup> Plaintiff sought for the following orders:

**a. Spent**

**b. The Honourable Court be pleased to review its orders issued on 23<sup>rd</sup> November, 2020 (sic) and discharge orders 1 and 2 registered over/against properties title numbers Mavoko Town Block 2/2506 and 2537 leaving order 3 in place to enable the Machakos Land Registrar issue title documents in respect to the said properties to the 1<sup>st</sup> Plaintiff.**

**c. The Machakos Land Registrar do issue the 1<sup>st</sup> Plaintiff with the title documents in respect to properties title number Mavoko Town Block 2/2506 and 2537.**

**d. In the alternative and without any prejudice to prayer 2 above, the Honourable Court be pleased to issue summons to the Machakos Land Registrar to show cause why he/she has failed to comply with court order issued on 23<sup>rd</sup> November, 2020 (sic).**

**e. Any other Order that the Honourable Court may deem just and fit to grant in the circumstance.**

**f. The costs of this Application be in the cause.**

2. The Application was supported by the Affidavit of the 1<sup>st</sup> Plaintiff/Applicant who deponed that he instituted the suit against the Defendant seeking the court to compel them to transfer properties known as Mavoko Town Block 2/2506 and 2537 to his names and that in a Ruling delivered on 23<sup>rd</sup> November, 2017, this court compelled the Defendant to transfer the suit properties in his name and in default the Deputy Registrar of this court to sign the transfer documents in place of the Defendant.

3. The 1<sup>st</sup> Plaintiff deponed that he unsuccessfully initiated the process of enforcing the court order and that subsequently, the Deputy Registrar executed the transfer documents; that he has since paid the stamp duty and obtained the Land Control Board consent in order to effect the transfer and that on 10<sup>th</sup> July, 2020 he lodged the transfer documents for registration and issuance of title documents at Machakos Land Registry vide booking numbers 377/7 and 377/8.

4. It was deponed by the 1<sup>st</sup> Plaintiff that the Land Registrar declined to issue the title documents and directed him to apply before this court for review and discharge of orders 1 and 2 of the court order of 23<sup>rd</sup> November, 2017 before he could issue the title documents and that it is in the interest of justice that the orders sought be granted. The Application was not opposed.

5. This suit was commenced by way of a Plaint dated 6<sup>th</sup> March, 2017. In the Plaint, the Plaintiff sought for several orders, including an order of mandatory injunction compelling the Defendant to unconditionally transfer title number Mavoko Town Block 2/2505 and 2537 (*Plot Nos.*

378 & 379 JKIA Phase 5). In the alternative, the Plaintiff prayed for the Deputy Registrar of this court to execute the transfer documents in favour of the 1<sup>st</sup> Plaintiff.

6. Together with the Plaintiff, the Plaintiffs filed a Notice of Motion of the same date in which they sought for the same orders that were sought in the Plaintiff. In the said Application, the Plaintiffs mixed up the prayers for interim orders of injunction pending the hearing of the suit and ‘an order of permanent mandatory injunction compelling the Defendant to transfer the suit property to the 1<sup>st</sup> Applicant and in default, the Deputy Registrar of this court to execute the transfer document.’

7. The Application was opposed by the Defendant by way of a Replying Affidavit and submissions. On 23<sup>rd</sup> November, 2017, this court allowed the Plaintiffs’ Application ‘as prayed.’

8. Indeed, while extracting the orders, all the prayers that were in the Application were extracted as such, including the prayers for temporary and permanent injunction, which in my view was not only erroneous but also confusing. It would appear that due to the mixed up of the orders, the Land Registrar has been unable to implement the said orders. The Plaintiffs are seeking for a review of the Orders to enable the Land Registrar issue a title document in favour of the 1<sup>st</sup> Plaintiff.

9. Having perused the Plaintiff, the Application and Ruling, it follows that what was before the court was an Application for temporary injunction pending the hearing of the suit and not for final orders. Indeed, although the court can in exceptional cases issue final orders at an interlocutory stage, the standards applicable in such a case are different from those applicable in an application for a prohibitory injunction.

10. While delivering its Ruling, this court was clear that the Plaintiffs had “*established a prima facie case with chances of success.*” This is one of the principles that is applicable in the grant of a temporary injunction. Consequently, it is clear that the court had no intention of granting the Plaintiffs final orders of injunction.

11. Considering that the present Application is for review of the Ruling of 23<sup>rd</sup> November, 2017, it is my finding that to the extent that the Ruling allowed the entire Application without specifying the orders that it had issued, there is an apparent error on the face of the record.

12. The prayer that the court allowed was in the nature of a temporary order of injunction and not both a permanent and temporary injunctions. The permanent order of injunction and the order directing the Registrar of this court can only be granted or disallowed after *viva voce* evidence has been tendered. Consequently, this court shall review its Ruling of 23<sup>rd</sup> November, 2017 and the subsequent orders to read as follows:

a. The Application dated 6<sup>th</sup> March, 2017 is allowed as follows: **The Defendant is hereby restrained by way of an injunction either by itself, its servants, its agents and/or whomsoever acting under its instructions from disposing, selling, offering for sale, sub-dividing, charging, transferring or in any way interfering with suit property Title No. Mavoko Town Block 2/2506 and Mavoko Town Block 2/2537 (Plot Nos. 378 & 379 JKIA PHASE 5) pending the hearing and determination of the suit.**

**b. The costs of the Application dated 6<sup>th</sup> March, 2017 to be paid by the Defendant.**

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 19<sup>TH</sup> DAY OF MARCH, 2021**

**O.A. ANGOTE**

**JUDGE**