



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 210 OF 2011

LAKEVIEW INVESTMENT LIMITED.....PLAINTIFF/APPLICANT

VERSUS

IAN MAGARA BWOSIEMO.....1ST DEFENDANT/RESPONDENT

BRENDA KWAMBOKA MANWAH.....2ND DEFENDANT/RESPONDENT

AL RUHIA ESTATES LIMITED.....3RD DEFENDANT/RESPONDENT

AND

DIRECTOR, DIRECTORATE OF CRIMINAL INVESTIGATIONS....1ST INTERESTED PARTY

INSPECTOR GENERAL OF POLICE.....2ND INTERESTED PARTY

HON. ATTORNEY GENERAL.....3RD INTERESTED PARTY

RULING

Introduction:

1. This Ruling is in relation to a Notice of Motion Application dated 29th January, 2020 in which the Applicant is seeking for the following orders:

a. That the Honourable Court be pleased to issue a prohibitory order restraining the Respondents together with their agents and/or servants from using officers drawn from the 1st and 2nd Interested Parties or from any other law enforcing agency to intimidate, harass and continuously summon the Plaintiff's representatives to the CID headquarters and police stations purportedly to investigate the ownership of the suit property known as L.R No. 25693 situate within Mavoko Municipality.

b. That the Honourable Court be pleased to issue a prohibitory order as against the 1st and 2nd Interested Parties restraining them from summoning officials and/or representatives of the Plaintiff/Applicant for interrogations on matters touching on the subject matter of the suit property known as L.R No. 25693 situate within Mavoko Municipality.

c. Costs of this Application be provided for.

2. The Application was supported by the affidavit of a Director of the Plaintiff who deponed that the Plaintiff is in actual possession of property known as L.R. No. 25693 situate within Mavoko Municipality (*herein referred to as the suit property*) by virtue of having purchased the same for valuable consideration from the 1st and 2nd Defendants pursuant to a Sale Agreement dated 16th February, 2009.

3. It was deponed by the Plaintiff's Director that as a result of the breach of the terms of the Sale Agreement by the 1st and 2nd Defendants, the Plaintiff instituted this suit against the Defendants herein seeking for orders of specific performance of the contract and that the dispute as regards ownership of the suit property was heard and determined by this court vide its Judgment delivered on 5th October, 2017 when the court held, *inter alia*, that the Plaintiff had proved its case against the Defendants.

4. It was deponed that the Defendants later filed an Application seeking to review and set aside the court's Judgment which Application was subsequently dismissed on 22nd March, 2019; that the 1st and 2nd Defendants have since filed a Notice of Appeal which is yet to be heard and that despite the matter having been marked as settled, the 1st and 2nd Interested Parties, through their officers, have continuously summoned the Plaintiff to their headquarters and various police stations for interrogation.

5. It was deponed that the Plaintiff's advocates complained about the constant harassment meted out to the Plaintiff's officials by officers from the 2nd Interested Party and that vide their response, the Director, Internal Affairs, wrote to the Machakos County Criminal Investigations Officer and copied the 1st Interested Party and advised him to restrain the DCIO from summoning one of the Plaintiff's representatives and desist from interfering with the civil matter.

6. It was further averred that despite the Plaintiff's Director having explained to the said officers that the issue regarding ownership of the suit property was a civil matter pending before this court, the officers from the 1st Interested Party have continued unabated to harass the Plaintiff and that recently, officers from the 1st Interested Party took surveyors to the suit property to take measurements.

7. The Plaintiff's Director deponed that it is imperative that the Respondents herein and the 1st and 2nd Interested Parties be prohibited from interfering with the Plaintiff's occupation of the suit property since the issue of ownership of the land has already been determined by this Court and that the Plaintiff/Applicant believes that the Respondents have hatched a fraudulent scheme to dispossess the Plaintiff of the suit property by using intimidation tactics.

8. The Defendants filed Grounds of Opposition and a Replying Affidavit. In the Grounds of Opposition, the Defendants averred that the court is *functus officio* and has no jurisdiction to hear the Application; that the enjoinderment of the Interested Parties in a suit that has already been finalized is unprocedural and an abuse of the court process and that the Application should be dismissed.

9. In the Replying Affidavit, the 3rd Defendant deponed that the Application is a gross abuse of the court process; that the court is *functus officio* having pronounced its decision in the matter and cannot revisit the case in the manner suggested and that it was baffling how new parties would be enjoined in a suit which is already finalized and without the leave of the court.

10. The Application was canvassed vide written submissions. The Plaintiff's advocate submitted that despite the fact that this court did conclusively hear evidence regarding the dispute of ownership of the suit property and delivered its Judgment, the Respondents have continuously made reports to the police and other investigative agencies alleging otherwise.

11. Counsel submitted that despite being shown court documents pertaining to the suit property, and the fact that the same has been conclusively determined albeit the pending Appeal, the Respondents herein filed various reports with the offices of the 1st and 2nd Interested Parties to intimidate and harass the Plaintiff's representatives by continuously summoning them and making demands of re-surveying the suit property.

12. Counsel submitted that any adverse dealing with the suit property contrary to the Judgment delivered herein is illegal and unlawful and that this court has the power to restrain the Respondents and the Interested Parties from dealing with the suit property contrary to the Judgment.

Analysis and findings:

13. This suit was commenced by the Plaintiff against the three Defendants. In the Plaint, the Plaintiff sought for an order declaring the Sale Agreement between the 3rd Defendant and the 1st and 2nd Defendants null and void; an order of specific performance against the 1st and 2nd Defendants to transfer land known as L.R. No. 25693 to the Plaintiff and an order of permanent injunction restraining the Defendants from selling the suit property.

14. In her Judgment dated 5th October, 2017, Ochieng J. held as follows:

- a. The Sale Agreement between the 3rd Defendant and the 1st and 2nd Defendants be and is hereby declared null and void;
- b. The 1st and 2nd Defendants be and are hereby ordered to refund the deposit of the purchase price amounting to Kshs. 1,950,000 including costs incurred to fence the land with interest at 18% per annum;
- c. Costs of the suit too be borne by the Defendants.

15. The Plaintiff in this matter filed a Notice of Appeal challenging the decision of this court on 17th October, 2017. This court has not been informed about the position of the said Appeal. The Plaintiff is now seeking for prohibitory orders, not just as against the Defendants, but as against the Interested Parties who have been joined in these proceedings without the leave of the court.

16. Indeed, as correctly argued by the Defendants, this court has no jurisdiction, under the Civil Procedure Rules or any law, to issue prohibitory orders in a matter which has been finalized. In fact, the orders that the Plaintiff is seeking from this court cannot be granted considering that this court cannot revisit the issue of the ownership of the suit property, a decision on that issue having been made with finality.

17. The Plaintiff did not seek the leave of this court before joining the 1st to 3rd Interested Parties to this finalized suit. Having not sought the leave of the court before joining the Interested Parties, and in view of the fact that the court does not have the jurisdiction of granting a

prohibitory order against the Defendants and the Interested Parties in a finalized matter, it is my finding that the Plaintiff's Application is incompetent and bad in law.

18. For those reasons, I dismiss the Application dated 29th January, 2019 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 5TH DAY OF MARCH, 2021.

O.A. ANGOTE

JUDGE