



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 54 OF 2020

STEEL PRODUCTS (KENYA) LIMITED.....PLAINTIFF

VERSUS

GRACE WAIRIMU GICHU.....1ST DEFENDANT

NAIROBI CITY COUNTY.....2ND DEFENDANT

CHIEF LAND REGISTRAR.....3RD DEFENDANT

RULING

The Plaintiff filed the application dated 1/10/2019 on 12/3/2020 seeking a temporary injunction to restrain the Defendants or their agents from dealing with, constructing on, or in any manner interfering with the property known as Dandora Block G plot number H.13 being land reference number (L.R. No.) 27224 (“the Suit Property”) pending hearing and determination of this suit. The application was made on the grounds that the Plaintiff purchased the Suit Property on 16/11/1995 from Georgette Mumbua Musyoka for Kshs. 1,200,000/= and the land was transferred by the Nairobi City Commission to the Plaintiff. The Plaintiff contended that the 1st Defendant’s actions of registering herself as the owner of the Suit Property was fraudulent and illegal. The Plaintiff averred that it stood to suffer irreparable loss if the 1st Defendant was allowed to construct on the Suit Property.

The application was supported by the affidavit of Peter Kitaka Mbugua who deponed that he was authorised to swear the affidavit on behalf of the Plaintiff. He deponed that Georgette Mumbua Musyoka was allotted the Suit Property on 24/9/1992 by the Nairobi City Commission and that she duly paid the stand premium on the same day and was issued a beacon certificate for the land dated 23/6/1995. The Plaintiff purchased the Suit Property on 15/9/1995. Georgette Mumbua Musyoka informed the 2nd Defendant vide the letter dated 27/10/1995 that she had transferred the land to the Plaintiff while requesting the 2nd Defendant to transfer the Suit Property to the Plaintiff. He averred that an endorsement was made on the letter of allotment signifying the transfer of the plot to the Plaintiff and the Plaintiff thereafter took possession of the land and was to await the processing of the deed plan.

Mr. Mbugua attached copies of the letter of allotment, receipt for payment of the stand premium, beacon certificate and sale agreement. He also produced a copy of the letter dated 27/10/1995 addressed to the 2nd Defendant together with receipts dated 10/9/1997 and 29/1/1998 issued by the 2nd Defendant to the Plaintiff on account of payment of ground rent. He produced a copy of the 2nd Defendant’s approval for the proposed warehouse class building dated 29/9/2015 as well as the approved building plans. He also produced a copy of the lease the 2nd Defendant issued to the 1st Defendant in respect of L.R. No. 27224. He produced a copy of the letter dated 25/7/2018 which the 2nd Defendant wrote to the Plaintiff confirming that according to its records the 1st Defendant was the rateable owner of the Suit Property.

Grace Wairimu Gichu, the 1st Defendant, swore the replying affidavit opposing the application for injunction. She deponed that the Suit Property was allocated to her on 21/2/1992 by the Nairobi City Commission. She averred that the Plaintiff was a stranger to her and that she held a lease over the Suit Property which the 2nd Defendant issued to her on 27/7/2015. She claimed that she had been in quiet and exclusive possession of the Suit Property since 21/2/1992 and that she had been paying the ground rent for the suit land. She added that she obtained the 2nd Defendant’s approval to build a boundary wall around the Suit Property and that she built the perimeter wall. She denied obtaining the Suit Property fraudulently and relied on Section 24 of the Land Registration Act. She attached copies of the letter of allotment dated 21/2/1992, receipt dated 27/10/1992 issued by the 2nd Defendant and the letter dated 19/9/2019 from the Directorate of Criminal Investigations (DCI) addressed to the Chief Land Officer of the 2nd Defendant seeking confirmation on the genuine letter of allotment in respect of the Suit Property. She attached a copy of the lease dated 2/2/2013 together with the receipts issued by the 2nd Defendant on account of approval fees for the building plans. She attached a copy of the letter dated 6/6/2018 vide which the 2nd Defendant confirmed that she was the registered owner of the Suit Property.

Isaac Nyoike, the 2nd Defendant's Chief Valuer swore the replying affidavit in opposition to the application for injunction. He deponed that the Suit Property was allocated to the 1st Defendant as plot number H 13 in Dandora Light Industrial Area (Block G). After registration, the suit land became L.R. No. 27224. He deponed that a lease dated 2/2/2013 was issued to the 1st Defendant. He maintained that according to the records held by the 2nd Defendant, the 1st Defendant was the rightful and registered proprietor of the Suit Property and that she was rightfully in possession.

The 3rd and 4th Respondents filed grounds of opposition in which they contended that the Plaintiff had failed to prove a *prima facie* case with a probability of success and that it had not established any imminent threat to warrant the intervention of court. Further, that it had not demonstrated that it would suffer irreparable harm.

Parties filed submissions which the court considered. The Plaintiff submitted that it purchased the Suit Property on 6/9/1995 from Georgette Mumbua Musyoka and that the transfer was endorsed by the 2nd Defendant. It submitted that it erected a perimeter wall around the Suit Property and a shed for storage of construction materials in 1999 while referring the court to the photographs it annexed to its application. It also made reference to the suit it filed against Kenya Railways Corporation in 2015 when the Railways Corporation demolished the Plaintiff's perimeter in the company of police officers. The Plaintiff challenged the documents produced by the 1st and 2nd Defendants as proof of the 1st Defendant's ownership of the Suit Property and pointed out several anomalies in those documents. It urged that the 2nd Defendant had been receiving rent and land rates from the Plaintiff. It also pointed out that the 1st Defendant had not paid land rates until 2015 which is the point in time when she was registered as the owner of the Suit Property. The Plaintiff maintained that the 1st Defendant sought approval to construct on the Suit Property long after Plaintiff had obtained approval to build workshops on the property in 1999. The Plaintiff submitted that it stood to suffer irreparable damage which would not be compensated by damages since it is difficult to find land measuring 0.8079 ha for light industrial purposes in that general area. The Plaintiff urged that it stood to suffer irreparable damage if the 1st Defendant interfered with the Suit Property by disposing of it.

The 1st Defendant submitted that the Plaintiff's application did not meet the principles for the grant of an injunction. She submitted that she was a *bona fide* purchaser for value without notice and that according to Section 26 of the Land Registration Act, her certificate of title was *prima facie* evidence that she was the proprietor of the Suit Property and was therefore its absolute and indefeasible owner. She submitted that she paid all the requisite fees to the 2nd Defendant including for approval of the building plans and the site board when she was preparing to develop the Suit Property before she was informed that the Plaintiff was also claiming ownership of the Suit Property. She argued that the letter of allotment which the Plaintiff relies on was subjected to forensic investigation and was found to be a forgery. She submitted that the unsubstantiated allegations made by the Plaintiffs were aimed at misleading the court to evade the issue of encroachment on the Suit Property. She urged the court not to grant the injunction sought by the Plaintiff in order to stop its illegal encroachment on the Suit Property. She submitted in the penultimate paragraph of her submissions that the Plaintiff had not demonstrated any imminent threat since it had never been in possession of the Suit Property and claimed that she had enjoyed peaceful possession of the plot for 28 years.

The 3rd and 4th Defendants submitted that the Plaintiff had failed to satisfy the three principles for the grant of a temporary injunction. They submitted that the Plaintiff had not demonstrated that it took possession of the Suit Property and that its continuous occupation of the land was threatened by the Defendants. They added that an award of damages would be sufficient redress in the event that the Plaintiff succeeded in the suit.

The issue for determination is whether the court should grant the orders of injunction sought by the Plaintiff. In the court's view the Plaintiff has established a *prima facie* case with probability of success. It has demonstrated how it acquired the Suit Property from a person who was allocated the land by the 2nd Defendant. From the records produced by the Plaintiff and the 1st Defendant it is apparent on the face of the documents that the 2nd Defendant may have allocated the Suit property to two different people. It is only at the trial that a determination on ownership of the plot can be made after parties adduce evidence.

It is necessary to restrain dealings with the Suit Property until a determination is made on the ownership of the land. The *status quo* prevailing on the Suit Property as at 15/4/2021 shall be maintained until this suit is heard and determined.

Costs shall be in the cause.

DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF APRIL 2021

K. BOR

JUDGE

In the presence of: -

Ms. L. Wanjohi holding brief for Mr. Abdi Hassan for the 1st Defendant

Mr. Gragory Nyauchi for the 2nd Defendant

Mr. V. Owuor- Court Assistant

No appearance for the Plaintiff and the 3rd and 4th Defendants