



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. E226 OF 2021

KONAPPA NARAYANA ASHOKA REDDY.....APPLICANT/PLAINTIFF

VERSUS

SAIF HOLDINGS LIMITED.....1ST RESPONDENT/DEFENDANT

REGISTRAR OF LANDS AT NAIROBI.....2ND RESPONDENT/DEFENDANT

THE HON.ATTORNEY GENERAL.....3RD RESPONDENT/DEFENDANT

RULING

1. Before me is a notice of motion application dated 24.6.2021 in which the Plaintiff/Applicant seeks the following orders: That an injunction be issued restraining the Respondent/Defendants either by themselves, their agents, servants, or any other persons from selling, alienating trespassing constructing any building warehouses, transfers, leasing, removing metal gate or in any other manner howsoever interfering with the Applicant/Plaintiff's L. R. No. 15107 approximately 0.4338 Ha located behind Mombasa Road within Nairobi County pending the hearing and determination of the application and the suit.
2. The applicant also seeks an order to evict the defendant and to demolish all the illegal constructions done by the 1st Respondent/Defendant i.e warehouses, office blocks or buildings and the OCS from Embakasi Police Station do provide security during the eviction and demolition.
3. The Applicant contends that he purchased the suit property L. R. No. 15107 from the original allottee on 1.4.1999 vide a sale agreement. That thereafter, a transfer dated 13.4.1999 was duly executed and the stamp duty was paid. The Applicant paid the stand premium of Kshs. 150,000 along with the annual rent of Kshs. 30,000 on 14.6.1999. All the relevant completion documents were then lodged at the ministry of Lands of which he was issued with a title under the RTA Act (Cap 281 repealed).
4. He avers that the Defendant has gone to the suit land, demolished part of the perimeter wall, forcefully opened the metal gate, gained entry and started massive construction of a warehouse without the knowledge and or consent of the Applicant.
5. The 1st Respondent has opposed the application vide a rather lengthy Replying Affidavit dated 16.7.2021 sworn by one Taherali Tajbhai who is a director of the 1st Respondent. He avers that the Respondent is the lawfully registered owner of the suit property vide a grant No. 66258 and that they have been the ones in physical possession of the suit property. They deny that the Applicant has ever erected any gate or wall on the suit property.
6. They contend that the property contains several warehouses whose construction was fully approved by the relevant authorities.
7. I have considered all the issues raised herein. The matter for consideration is whether the injunctive orders sought by the Plaintiff are merited. The provisions of **Order 40 Rule 1(a)** of the **Civil Procedure Rules** provides:-

“ Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(b)...the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders”.

8. Since the Applicant is seeking for injunctive orders, at this juncture, the court will not deal with the disputed issues with a finality given that the available evidence now is through affidavits.

9. In determining the application, this court makes reference to the criteria set down in the case of *Giella vs Cassman Brown & Co. Ltd 1973 EA 358*, to the effect that the Applicant must show a prima facie case with a probability of success, that an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which might not adequately be compensated by an award of damages and that if the Court is in doubt, it will decide such an application on the balance of convenience

10. In the instant case, both parties, have claimed to be the registered owners of the suit property, each having registration documents to that effect. It follows that the issue of ownership is the subject of contest which should not be determined at this interlocutory stage.

11. As regards the utilization of the land, I find that the Applicant claims to have erected the perimeter wall and gate many years ago while the 1st Respondent claims to have always been in possession of the suit land having built up several warehouses.

12. A look at the photographs availed by both parties reveal that indeed the place is built up with several warehouses. The excavation is right in front of the visible warehouses used by 1st Respondent. The court cannot ascertain when the wall was built up. The bottom line is that the suit premises are utilized by the Defendant. In that regard, I find that the balance of convenience tilts in favour of the 1st respondent. The application is dismissed with costs to the 1st Respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF FEBRUARY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

IN THE PRESENCE OF:-

SALESI FOR THE PLAINTIFF/APPLICANT

ALLAN KAMAU FOR THE 2ND AND 3RD DEFENDANTS

HARRY NGANGA FOR THE 1ST RESPONDENT

COURT ASSISTANT: EDEL BARASA