



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC PETITION NO. E134 OF 2020**

**PAUL KIMANI NJOROGE.....PLAINTIFF**

**VERSUS**

**KENYA RAILWAYS CORPORATION.....1<sup>ST</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR.....2<sup>ND</sup> DEFENDANT**

**RULING**

Through the application dated 17/9/2020, the Plaintiff sought a temporary injunction to restrain the 2<sup>nd</sup> Defendant from processing a title in favour of the 1<sup>st</sup> Defendant and to restrain the Defendants from trespassing into, taking possession, disposing of or transferring the land known as Nairobi Block 93/1469, formerly L.R No. 209/9534B (part) 49 Plainsview South B, Nairobi ("the Suit Property") pending hearing and determination of this suit. The Plaintiff further sought a temporary injunction to restrain the 2<sup>nd</sup> Defendant from issuing a certificate of lease or title relating to the Suit Property to the 1<sup>st</sup> Defendant until the case is heard.

Further, the Plaintiff sought an order to compel the 2<sup>nd</sup> Defendant to cancel and revoke any title deed or certificate of leases and any other subdivisions relating to the Suit Property and for the 2<sup>nd</sup> Defendant to issue a certificate of lease over the Suit Property to the Plaintiff. He also sought a declaration that the Suit Property belonged to him and that he should be registered by the 2<sup>nd</sup> Defendant as the absolute proprietor of the land. In addition, he sought a permanent injunction to restrain the 2<sup>nd</sup> Defendant from issuing a certificate of lease to the 1<sup>st</sup> Defendant relating to the Suit Property pending hearing and determination of this suit.

The application was made on the grounds that the Plaintiff purchased the Suit Property from the 1<sup>st</sup> Defendant in 2002 and paid the entire purchase price of Kshs. 1,500,000/= to the 1<sup>st</sup> Defendant who subsequently refused and neglected to transfer the Suit Property to the Plaintiff despite receiving and retaining the full purchase price. The Plaintiff contended that the 1<sup>st</sup> Defendant wrote a letter dated 24/8/2020 asking the 2<sup>nd</sup> Defendant to issue to it a certificate of lease over the Suit Property. The Plaintiff claimed that he had been in open, continuous and uninterrupted possession of the Suit Property since 2002 and urged that he stood to suffer irreparable loss and damage if the court did not grant the orders sought.

The application was supported by the Plaintiff's affidavit sworn on 17/9/2020. He attached copies of an illegible letter on the offer for sale of the Suit Property and the sale agreement which he executed with the 1<sup>st</sup> Defendant. He attached a copy of an unclear letter which seems to be dated 3/5/2002 which he wrote asking the 1<sup>st</sup> Defendant's cashier to accept payment of the sum of Kshs. 150,000/= being 10% deposit of the purchase price for L.R. No. 209/9584 (part) 49 Plainview South B Nairobi. The other documents he attached showed that he made a further payment of Kshs. 1,350,000/= on 17/9/2010.

He also produced a copy of his advocate's letter dated 17/9/2010 addressed to the 1<sup>st</sup> Defendant's Corporation Secretary confirming that payment was made on 17/9/2010 while stating that the Plaintiff received the letter dated 15/4/2009 on 14/9/2010. He also produced a copy of the 1<sup>st</sup> Defendant's letter dated 15/2/2011 which forwarded the transfer documents for his completion. The 1<sup>st</sup> Defendant wrote to the Commissioner of Lands on 10/6/2011 confirming that it had sold the Suit Property to the Plaintiff but that upon lodging the transfer for issuance of the certificate of lease they learned that the Registrar had without authority or right transferred the Suit Property to Miss Caroline Njeri Wambugu. The 1<sup>st</sup> Defendant wrote to the Chief Land Registrar on 24/8/2020 regarding the investigations on the Suit Property and requesting cancellation of the lease issued to Caroline Njeri Wambugu. The letter indicated that several documents were being forwarded including the original lease in the name of Caroline Njeri Wambugu, the original certificate of lease in the name of Michael Muturi Karanja and the deed of surrender executed by Michael Muturi Karanja.

Stanley Gitari swore the 1<sup>st</sup> Defendant's replying affidavit in opposition to the Plaintiff's application. He confirmed that the 1<sup>st</sup> Defendant was allocated the Suit Property vide the allotment letter reference 93103/III/112 of 10/2/2000. He confirmed that the 1<sup>st</sup> Defendant offered to

sell the Suit Property to the Plaintiff on 25/1/2002 and the parties executed the sale agreement on 3/6/2002. He averred that the Plaintiff remitted the sum of Kshs. 150,000/= being 10% of the purchase price to the 1<sup>st</sup> Defendant and was to remit the balance of Kshs. 1,350,000/= on or before 3/8/2002 which he failed to pay.

Mr. Gitari averred that the Plaintiff failed to complete the transaction as stipulated in the sale agreement which led to the termination of the sale in accordance with the sale agreement. He averred that there had never been any handing over of vacant possession by the 1<sup>st</sup> Defendant to the Plaintiff and that the Plaintiff on diverse dates in 2012 illegally entered into possession of the Suit Property prompting the 1<sup>st</sup> Defendant to write the letter dated 6/6/2012 asking the Plaintiff to vacate the Suit Property while advising him to seek a refund of the 10% deposit pursuant to the terms of the sale agreement.

He deponed that the issue of the irregular transfer of the Suit Property to a third Party was under investigation by the Directorate of Criminal Investigations (DCI) and that the irregular allottees had surrendered the title documents to the 1<sup>st</sup> Defendant. He confirmed that the 1<sup>st</sup> Defendant wrote to the 2<sup>nd</sup> Defendant on 16/10/2020 forwarding the irregular title documents to the 2<sup>nd</sup> Respondent for it to revert the registration of the Suit Property to the 1<sup>st</sup> Defendant. He produced copies of letters dated 10/6/2011, 6/6/2012 and 12/11/2012.

He averred that the Plaintiff is seeking to have the court pronounce itself with finality on disputed facts on the basis of affidavit evidence and contended that prayer numbers 4, 5, 6 and 7 of the Plaintiff's application could not be granted in the interim period.

The Plaintiff filed a further affidavit in which he deponed that on 23/9/2020 the DCI informed the 1<sup>st</sup> Defendant that its investigations had established that the Suit Property was registered fraudulently in the name of Caroline Njeri Wambugu who transferred it to Michael Muturi Karanja. Further, that Michael Muturi Karanja had voluntarily surrendered the original lease through a deed of transfer to avoid prosecution. He attached a copy of that letter.

Parties filed submissions which the court has considered. The Plaintiff relied on Order 40 Rule (1)(a) and (b) of the Civil Procedure Rules on when the court should grant an interlocutory injunction. He submitted that the threat in this case was that the 1<sup>st</sup> Defendant contended that it was the legal and beneficial owner of the Suit Property. The Plaintiff urged that he had shown a prima facie case and that he stood to suffer irreparable injury by losing the Suit Property if the injunctive orders were not granted and that the loss he stood to suffer could not be adequately compensated by way of damages. The Plaintiff urged the court to allow the application.

The 1<sup>st</sup> Defendant submitted that the Plaintiff had not satisfied the grounds for grant of injunctive orders. The 1<sup>st</sup> Defendant contended that the Plaintiff failed to complete the transaction in accordance with the sale agreement despite being issued numerous completion notices. Further, the 1<sup>st</sup> Defendant submitted that the sale agreement it entered into with the Plaintiff could not be enforced pursuant to Section 4 (1) (a) of the Limitation of Actions Act since the cause of action arose more than 6 years before the suit was filed. The 1<sup>st</sup> Defendant contended that injunctive relief was an equitable remedy and that the Plaintiff had been indolent in filing his suit 8 years after the cause of action accrued. The 1<sup>st</sup> Defendant contended that whatever loss the Plaintiff would suffer was quantifiable and would be compensated by an award of damages. The 1<sup>st</sup> Defendant contended that it was the one that stood to suffer loss by the Plaintiff's continued occupation of its property.

Regarding prayers 4, 5, 6 and 7 of the application, the 1<sup>st</sup> Defendant submitted that those were contentious issues raised by the parties which required proper interrogation during a trial by calling of evidence. The 1<sup>st</sup> Defendant further submitted that a permanent injunction could not be granted at the interlocutory stage.

The issue for determination is whether the court should grant the orders sought in the application dated 17/9/2020. The court agrees with the 1<sup>st</sup> Defendant that prayers number 4, 5, 6 and 7 are final in nature and would dispose of the matter hence they should not be granted at this stage.

There is no evidence to confirm that the title which was earlier issued to Caroline Njeri Wambugu and Michael Muturi Karanja was ever cancelled by the lands office. If Caroline Njeri Wambugu and Michael Muturi Karanja are still registered as proprietors of the Suit Property, then they need to be made parties to this suit so that they can be heard. No official search was produced by the Plaintiff to show who the current registered proprietor of the Suit Property was, and whether the surrender said to have been executed by Caroline Njeri Wambugu and Michael Muturi Karanja was ever registered against the suit land. These and other issues regarding the validity of the sale transaction between the Plaintiff and 1<sup>st</sup> Defendant can only be determined at the trial.

Parties are directed to maintain the status quo currently prevailing on the Suit Property and at the lands registry until this dispute is determined. They are to comply with Order 11 of the Civil Procedure Rules so that the case can be disposed of expeditiously.

Delivered virtually at Nairobi this 13<sup>th</sup> day of May 2021.

**K. BOR**

**JUDGE**

**In the presence of: -**

Ms. Maureen Nganga for the Plaintiff

Mr. K. Gitonga holding brief for Mr. I. Kangatta for the Defendant

