



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. E003 OF 2021

MENELIK HOUSE LIMITED.....PLAINTIFF

=VERSUS=

FRANCIS ODUMBE OSODO.....DEFENDANT

RULING

1. By an Originating Summons dated 18th January 2021 the plaintiff seeks orders. It seeks orders:-

1. A declaration that this honourable court be pleased to issue an order of injunction restraining the defendant jointly, and severally herein either by himself, his servants, employees, agents and/or any other persons working under his instruction from selling, transferring, alienating, disposing, entering, trespassing, interfering and/or dealing with the suit property being LR NO 1/580 Nairobi along Ngong Road Nairobi.

2. A declaration that the plaintiff is the legal owner entitled to purchasing all that parcel of land comprised of Title Number LR NO 1/580 Nairobi situated in Nairobi.

3. Costs be provided for..

2. The Originating Summons is supported by an affidavit sworn by Jane Agoki, one of the directors of the plaintiff on the 18th January 2020.

3. Together with the Originating Summons the plaintiff filed a notice of motion dated 18th January 2021 seeking orders:-

1. Spent.

2. Spent.

3. That this honourable court be pleased to issue an order of temporary injunction against the defendant jointly and severally herein either by himself, his servants, employees, agents and/or any other persons working under his instructions from threatening, interfering and/or in any way interfering with the tenants' quiet enjoyment of possession in the suit property being LR No 1/580 Nairobi along Ngong Road Nairobi pending the hearing and determination of the originating summons.

4. That the costs of this application be provided for.

4. The grounds are on the face of the application and are set out in paragraph (a) to (f).

5. The application is supported by the affidavit of June Agoki one of the directors of the plaintiff/applicant sworn on the 18th January 2021.

6. In response, the defendant filed a replying affidavit sworn on 11th February 2021. He also filed a Notice of Preliminary Objection dated 19th February 2021.

7. On the 24th March 2021, the court directed that the Preliminary Objection be heard first in priority to the Notice of Motion. The court also directed that parties do file written submissions in respect of the Preliminary Objection.

8. I have considered the Preliminary Objection and the written submission filed on behalf of the parties. The issue for determination is

whether the Preliminary Objection is merited.

9. As to whether this is a Preliminary Objection, I rely on the case of **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors [1969] EA 696**. I find that the issues raised herein are pure point of law.

10. It is not in dispute that there exists ELC 458 of 2017 which is pending before this court. The suit relates to ownership and possession of the suit property. The defendant herein is an Interested Party in that suit.

11. **Section 6** of the Civil Procedure Act provides that:-

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed”.

12. I find that if the issue of ownership in ELC 458 of 2017 is resolved, then it would not be necessary to hear the originating summons herein.

13. The Preliminary Objection herein is merited and the same is upheld. Consequently, the Originating Summons dated 18th January 2021 and the Notice of Motion dated 18th January 2021 are an abuse of the court process and are struck out with costs to the defendant.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 29TH DAY OF JULY 2021.

.....

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Okoth Obera for the Plaintiff

Mr. Rabala for the Defendant

Phyllis - Court Assistant