



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 238 OF 2016

PATRICK KARIGE MUNGE.....PLAINTIFF/APPLICANT

VERSUS

GURUN INVESTMENT LIMITED.....1ST DEFENDANT/RESPONDENT

DAYAH CONSTRUCTION

COMPANY LIMITED.....2ND DEFENDANT/RESPONDENT

CHIEF LAND REGISTRAR.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

RULING

1. This is the Notice of Motion dated 17th February 2020 brought under Article 159 of the Constitution of Kenya, 2010, Section 1A, 1B and 3A of the Civil Procedure Act, Cap 21 of the Laws of Kenya, Order 22 Rule 6 and Rule 18(2)(3) of the Civil Procedure Rules, 2010, and all other enabling provisions of the law.

2. It seeks orders:-

1. Spent.

2. A Prohibitory order of injunction be issued stopping any registration or any further dealing in respect of the 2nd defendant's parcel of land known as L.R. Nos 19952/4 and 19952/5 (Grant Nos 153627 and 153628 respectively) (hereinafter 'the subject properties') situated in the City of Nairobi and registered in the name of the 2nd defendant pending further orders of this honourable court.

3. That the subject properties owned by the 2nd defendant namely LR Nos 19952/4 and 19952/5 (Grant Nos 153627 and 153528 respectively) be advertised and sold by public auction to recover the outstanding total decretal sum of Kshs.30,000,000/- due and owing to the plaintiff.

4. That the 2nd defendant be ordered to grant free and un-limited access of LR Nos 19952/4 and 19952/4 (Grant Nos.153627 and 153628 respectively) to the plaintiff's agents for purpose of valuation and inspection.

5. That this honourable court do allocate a convenient date before the Deputy Registrar for the settlement of the terms and conditions of sale of the subject properties.

6. That the costs of valuation, auctioneer's fees, and other related expenses be paid from the proceeds of sale.

7. That pending the hearing and determination of this application, interim orders be granted in terms of prayer (2) above to prevent this application from being rendered nugatory.

8. That this honorable court be pleased to make such further orders as it may deem just, fair, reasonable and appropriate in the circumstances in order for the ends of justice to be met.

9. That the costs of this application be provided by the 2nd defendant.

3. The grounds are on the face of the application and are set out in paragraphs 9 to 24.
4. The application is supported by the affidavit of Patrick Karige Munge the plaintiff/applicant herein sworn on the 17th February 2020.
5. The application is opposed. There is a replying affidavit sworn by Ubdi Yahye Hagi a director of the 1st defendant, on the 15th July 2020.
6. The application was canvassed by oral submissions on the 30th June 2021.
7. I have considered the notice of motion, the supporting affidavit and the annexures. I have also considered the replying affidavit and the oral submission of counsel. The issue for determination is whether this application is merited.
8. On the 12th April 2021 parties recorded a consent as follows:-

“By consent the 1st and 2nd defendants/respondents to pay the plaintiff a sum of Kshs.10 million by close of business today. The matter be mentioned in fourteen (14) days as regards the balance”.

9. The said consent was adopted as the order of this court on the 30th June 2021.
10. It is the plaintiff's/applicant's case that the 1st and 2nd defendants/respondents have not complied with the consent orders to date.
11. I have gone through the replying affidavit filed on behalf of the 1st and 2nd defendants. I find that there is no explanation for the delay. In fact, no reason has been given as to why the 1st and 2nd defendants have not complied with the consent orders. The said affidavit is full of mere denials.
12. I find merit in the notice of motion dated 17th February 2021 and the same is allowed in the following terms:-

(a) A Prohibitory order of injunction is hereby issued stopping any registration or any further dealing in respect of the 2nd defendant's parcel of land known as L.R. Nos 19952/4 and 19952/5 (Grant Nos 153627 and 153628 respectively) (hereinafter the subject properties) situated in the City of Nairobi and registered in the name of the 2nd defendant pending further orders of this honourable court.

(b) That the subject properties owned by the 2nd defendant namely LR Nos 19952/4 and 19952/5 (Grant Nos 153627 and 153528 respectively) be advertised and sold by public auction to recover the outstanding total decretal sum of Kshs.30,000,000/- due and owing to the plaintiff.

(c) That the 2nd defendant is hereby ordered to grant free and un-limited access of LR Nos 19952/4 and 19952/4 (Grant Nos.153627 and 153628 respectively) to the plaintiff's agents for purpose of valuation and inspection.

(d) That this honourable court do allocate a convenient date before the Deputy Registrar for the settlement of the terms and conditions of sale of the subject properties.

(e) That the costs of valuation, auctioneers fees, and other related expenses be paid from the proceeds of sale.

(f) That the costs of this application be provided by the 2nd defendant.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 21ST DAY OF OCTOBER 2021.

.....

L. KOMINGOI

JUDGE

In the presence of:-

MR. KIMATHI FOR THE PLAINTIFF

MRS. HANAN FOR THE 1ST AND 2ND DEFENDANT

NO APPEARANCE FOR THE 3RD AND 4TH DEFENDANTS

STEVE - COURT ASSISTANT