



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC NO. 190 OF 2015

MYTA DEVELOPMENT LIMITED.....PLAINTIFF

-VERSUS-

HON. CHARITY NGILU, CABINET SECRETARY

MINISTRY OF LANDS HOUSING AND URBAN DEVELOPMENT.....1ST DEFENDANT

CHIEF LAND REGISTRAR.....2ND DEFENDANT

DIRECTOR OF SURVEYS.....3RD DEFENDANT

BONVENTURE TOURS & TRAVEL LIMITED.....PROPOSED INTERESTED PARTY

RULING

Introduction.

1. This is a ruling in respect of two separate applications. The first application is dated 5th March 2015. It is brought by the Plaintiff and it seeks the following orders: -

1. Spent

2. Spent

3. THAT this Honourable Court be pleased to issue a temporary injunction restraining, the Defendants by themselves, their agents and servants from trespassing onto, encroaching erecting or causing to be erected any structure(s) and from alienating or causing to be alienated, selling, disposing, charging and/or in any way whatsoever, dealing with the mat property herein, being all that prime parcel known as L.R. No. 209/19473, situated on State House Crescent, within the City of Nairobi, pending the hearing and final determination of this suit.

4. THAT this Honourable Court be pleased to issue a temporary injunction ordering the Defendants by themselves, their agents, servants and proxies to leave, vacate and move out of the suit property herein, being all that prime parcel known as L.R. No. 209/19473 situated on State House Crescent, within the City of Nairobi, pending the bearing and final determination of this suit.

5. THAT the Officer Commanding, Kilimani Police Station, do enforce compliance of this Honourable Court's Orders and ensure order at the suit premises herein being all that prime parcel known as L.R. No. 209/19473, situated on State House Crescent, within the City of Nairobi.

6. THAT the costs of this application be provided for.

2. The 2nd application is dated 11th March 2015. It is brought by Bonventure Tours Travel Limited which seeks to be enjoined in these proceedings as a Plaintiff.

3. The subject matter of this suit relates to a prime property which is at State House Crescent in Nairobi. The Plaintiff/Applicant claims the suit property which is LR No.209/19473. The Applicant in the second application claims the same property under LR No. 209/5581. The

Ethics and Anti-Corruption Commission (EACC) is also seeking to recover the same land in ELC 573 of 2017. The recovery by EACC is being done under LR NO. 209/5581.

The First Application.

4. The Applicant in this application contends that it is the registered owner of LR No. 209/19473. The Applicant purchased this property which was then owned by four individuals and companies. The property was then LR No. 209/5581/2, LR No.209/5581/3, LR No. 209/5581/4 and LR No. 209/5581/15 . The properties were purchased for Kshs.7,500,000/= each making a total of Kshs.30,000,000/= . The purchase was in the year 2005. The Applicant then applied for amalgamation which was approved. The property upon amalgamation became LR No. 209/19473.

5. The Applicant then applied for development approval which was granted. The Applicant intended to put up residential apartments. In 2015, 1st Defendant raided the property on grounds that she was recovering grabbed government land. The Applicant contends that the 1st Defendant later returned with a private contractor who deposited building materials.

6. The Applicant's application was not opposed by the Respondents.

Analysis.

7. Even though the application was not opposed, I am under obligation to be satisfied that the Applicant has established a prima facie case to warrant grant of an injunction. While giving the introduction, hereinabove, I stated that this property is being claimed by three parties. EACC is claiming it on grounds that the property was owned by Nairobi City Council which irregularly sold it out to the Applicant in the second application.

8. There is even an application by the Applicant to have this suit consolidated with ELC 573 of 2017. There is also another suit where the Applicant in the second application is fighting over ownership of the property with among others, the Applicant in this case. The Applicant is not on the ground having been ejected in 2015. Given the circumstances, the Applicant cannot be ordered to get back into the suit property. The best order to be made in the circumstances is that the status quo should be maintained until the dispute herein is heard and determined.

Disposition.

9. I grant an order of maintenance of the status quo which should last until the dispute in this case is resolved. The costs of this application shall be in the cause.

It is so ordered.

The second application.

10. The Applicant in this application contends that it is the registered owner of LR No. 209/5581. The Applicant purchased this property from Nairobi City Council vide a transfer which was registered on 10th August 1992. The Applicant then took possession and constructed a perimeter wall around the property. It put up a site house.

11. The Applicant then applied for subdivision of the property. The subdivision was approved but no titles came out. The Applicant contends that it has the original title in its possession. Sometime in 2013, some individuals visited the property and claimed ownership, demolished the perimeter fence and chased away its workers.

12. The Applicant proceed to conduct investigations which revealed that the suit property had been subdivided into five titles namely LR No. 209/5581/1, LR No.209/5581/2, LR 209/5581/3, LR 209/5581/4 and LR No. 209/5581/5 which were given to individuals and companies. The new titles were then transferred to the Applicant in the first application which proceeded to amalgamate the titles into LR No. 209/19473.

13. The Applicant proceeded to file ELC 794 of 2003 against 9 Defendants. This suit was later withdrawn and the Applicant filed ELC 97 of 2007 whose proceedings are said to be pending determination in the Court of Appeal.

14. This application has been pending determination for over six years. There is no evidence that any party filed either grounds of opposition or replying affidavit in opposition to this application. When this matter came before me on 29th June 2021, counsel for the Applicant in the first application informed the court that they were yet to get instruction from their client on whether to oppose the application. The Respondents were given seven days within which to file written submissions. As at 24th August 2021 when I was writing this ruling, no Respondent had filed submissions.

15. I have considered the Applicant's submissions which are dated 11th May 2021. I notice that the Applicant has mentioned that the Applicant in the first application filed a replying affidavit sworn by Hailu Asfaw Menhessa. That affidavit is not in the file. As the counsel for the Applicant in the first application seems not to be aware of any affidavit, it is safe to assume that none was filed. Be that as it may the issue for determination is whether the Applicant has demonstrated that it should be enjoined in these proceedings.

16. The Applicant has provided a copy of transfer registered on 10th August 1992 in its favour. The subdivisions which were purchased by the Applicant in the first application were registered in 2003. The Applicant in the first application then purchased all the subdivisions in 2005 and later on amalgamated. It is therefore clear that the Applicant in this application has demonstrated that it has a stake in this property

for it to be enjoined in this suit. Indeed, there are other proceedings where the Applicant is fighting over the same property with the Applicant in the first application. I therefore find that the Notice of Motion dated 11th March 2015 is well merited . I allow the same with the result that the Applicant is enjoined in the proceedings as the 2nd Plaintiff. The pleadings herein should be served upon it and it is at liberty to file its documents in this matter within 14 days. Costs shall be in the cause.

It is so ordered.

17. In summary thereof, I grant an order of maintainance of status quo in respect of the notice of motion dated 5th March 2015. Costs shall be in the cause. I allow joinder of the Applicant in the second application as a second Plaintiff. Pleadings to be served upon the added Plaintiff which shall file its pleadings within 14 days from the date of this Ruling.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 25TH DAY OF NOVEMBER, 2021

E. O. OBAGA

JUDGE

In the Virtual Presence of:-

Mr Shirugu for proposed interested party

Court Assistant: Mercy

E.O. OBAGA

JUDGE