



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL SUIT NO 50 OF 2019

RICHARD KIPRUTO BUSIENEIAPPLICANT

VERSUS

GEORGE NJOROGE MUIRURI T/A LEAKEYS AUCTIONEERS.....RESPONDENT

RULING

1. By an application dated 31/03/2020 the applicant **RICHARD KIPRUTO BUSIENEI** prays for the following orders:

- a) The Chief Land Registrar to proceed to register the inhibition order which was received at the Central Lands Registry in Nairobi on 17.1.2020.
- b) The Chief Land Registrar to recall and cancel the title deed issued to **LIMO LIMITED** on 12.3.2020 over parcel of land number **L.R. NO. 6459/4 OFF PLATEAU- AINABKOI ROAD**
- c) An order of temporary injunction does issue against **LIMO LIMITED** or their servant's agents or assigns from dealing with the plaintiff's property title number **L.R. NO. 6459/4 OFF PLATEAU- AINABKOI ROAD** or in any other way pending the hearing and determination of the main suit.
- d) Cost of this application be in the cause.

2. The application is premised on grounds that:

- i. The applicant obtained an order against the defendant herein dated 19.12.2019 temporarily staying the public auction over his property **L.R. NO. 6459/4 OFF PLATEAU- AINABKOI ROAD** for 14 days as from 20.12.2019.
- ii. Despite being duly served with the court order dated 19.12.2019 and pleadings, the respondent proceeded with the public auction in the face of a valid court order.
- iii. Consequently, the applicant filed a contempt application against the respondent herein dated 13.1.2020 which is yet to be determined.
- iv. The applicant also obtained an inhibition order dated 15/1/2020 against the Chief Land Registrar from dealing in any way whatsoever with parcel number **L.R. NO. 6459/4 OFF PLATEAU- AINABKOI ROAD** pending the hearing and determination of the contempt application dated 13.1.2020, which order was received at the central lands registry in Nairobi on 17.1.2020.
- v. The intended 3rd defendant (**LIIMO LIMITED**) has a copy of a title deed over the disputed parcel of land issued to them on 12.3.2020 after the inhibition order was received at the central Lands Registry in Nairobi on 17.1.2020.
- vi. The intended 2nd defendant has already shown interest to be enjoined in the suit vide an application dated 4.2.2020 which is yet to be canvassed.
- vii. Irreparable damage will be occasioned upon the applicant in the event this application is not allowed.

In the supporting affidavit, the applicant deposes that on 28.3.2020 unknown people went to his parcel of land in the company of policemen indicating that they had bought the said parcel of Land through a public auction and served the applicant with a copy of the title deed which was in the name of **LIIMO LIMITED**.

3. The applicant contends that the said title deed indicates that it was issued to them on 12.3.2020 by the Chief Land Registrar in Nairobi yet the applicant had obtained an inhibition order on 15.1.2020 against the chief land registrar from dealing with the said parcel of land and which was received at the lands registry in Nairobi on 17.1.2020. He fears that this could be a carefully webbed plan by the respondent and the intended 2nd and 3rd defendant to deny me a chance to salvage my property by not following the laid down procedures before advertising the subject property for sale through public auction and further transferring the land despite there being a valid inhibition order.

4. That it is necessary for STANBIC BANK KENYA LIMITED and LIMO LIMITED be enjoined to this suit as Defendants as their presence before this Honourable court is necessary in order to enable this Honourable court to effectually and completely adjudicate upon and effectively determine and settle all questions involved in this suit

5. THAT in joining the intended Defendant STANBIC BANK KENYA LIMITED and LIMO LIMITED the respondent will not suffer any prejudice in the event this application is allowed since they can be granted leave to amend their pleadings. Further, that if this instant application is not allowed and then the applicant's property gets to be sold in the face of valid court orders stopping and inhibiting the same while the correct laid down legal procedure of attachment and sale of immovable property was not followed.

6. The 1st respondent in the replying affidavit has no objection to the prayers, saying his role ended once he had confirmed the sale following instructions from his client and the successful bidder was LIMO LTD. The proposed 2nd defendant urges this court to find that the suit is an abuse of court process as it has never been a party to the suit. The 3rd proposed defendant confirms that it participated in the auction after seeing an advertisement of a sale by public auction in the local newspapers, and did due diligence before proceeding to the land registry to obtain registration for the property. Its objection is that the orders cannot issue when there is no existing suit between it and the applicant, citing order 3 rule 1 of the Civil Procedure Rules.

7. That in any event the suit property is no longer in the applicant's name as the same is now registered in the 3rd respondent's name who has even taken possession and ploughed the land. Citing the case of **Giella v Cassman Brown and Mrao v First American Bank of Kenya**, it is argued that the applicant does not have a prima facie case with probability of success, as he does not have an arguable case. That in any case the applicant is not specific as to what he wishes the 3rd respondent to be restrained from. That in any event an inhibition had not been registered as provided under section 68 (1) of the Land Act, so there is nothing to stop the Chief Land Registrar from registering the property in favour of the 3rd respondent

8. Certainly as matters stand there is no suit existing between the applicant and the proposed respondents. However, it would be totally myopic to sustain that argument since there is an intention to join them. The joinder is precisely because the property which had belonged to the applicant was advertised for sale and ended up being bought by the 3rd respondent at a time when, according to the applicant there was a valid court order in existence. Indeed, the issue as to whether the order for inhibition was served, and whether that service alone was adequate to warrant the Chief Land Registrar not to carry on with any further registration process, is an arguable point that cannot be wished away by a citing of section 68 (1) of the Land Act.

9. Apart from that, is the fact that as matters stand, the land has already been alienated from the applicant, and is at risk of further alienation or adverse dealings which could result in totally being unable to get it back. Worse still is that there would be no guarantee that even if damages were paid, the applicant would be able to get another similar property within the said locality. I think these two factors are at the brink of meeting the threshold in *Giella V Cassman Brown*.

10. However, there are two issues raised by the 3rd respondent which I cannot ignore- what acts should the applicant be restrained from? Why wasn't the inhibition registered at the time it was issued so as to warrant an order to that effect being made against the Chief Land Registrar? I am left to guess, and all I can do is draw from the equitable maxim that **"EQUITY DOES NOT AID THE INDOLENT"**. It is not the role of this court as an umpire to aid the applicant in figuring out what actions are to be restrained.

11. Then there is the issue touching on the 2nd respondent, the applicant has not disclosed to this court what the bank's role was and again the court is left to guess and make a presumption that it probably was the instructing client to the auctioneer. So what orders should the court issue against it seeing that the horse already bolted from the stable? I am unable to make any orders

Consequently, the application stands on very wobbly feet, and I am constrained to dismiss it with costs to the respondents.

E-delivered and dated this 21st day of May 2020

H. A. Omondi

JUDGE