



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 232 OF 2015 (O.S)

JOHN KAMAU MUNGA.....APPLICANT

=VERSUS=

ZACHARIA NYAUNCHO NYAKOE.....RESPONDENT

RULING

The applicant brought this suit in person on 18th March, 2015 by way of Originating Summons dated 17th March, 2015. In his Originating Summons, the applicant sought a declaration that he had acquired all that parcel of land known as Ngong/Ngong/4308 (hereinafter referred to as “the suit property”) by adverse possession and that the property be registered in his name as the proprietor thereof forthwith. The applicant’s Originating Summons was brought on the grounds that the applicant had been in open, continuous and uninterrupted occupation of the suit property for a period in excess of 15 years preceding the date of the presentation of the application and that, the respondent’s title over the suit property had been extinguished. The applicant averred that his occupation of the suit property had been hostile to the respondent’s interest in the property and that the respondent had not consented to his occupation.

From the court record, there is also no evidence that the Originating Summons was served upon the respondent or that the matter was placed before the court at any time after the filing of the Originating Summons for directions or order. Although the suit was filed on 18th March, 2015 as aforesaid and despite the fact that no order had been made in the matter, the applicant purported to have obtained a judgment in the suit on 27th February, 2015 in his favour and proceeded to extract a decree on 4th March, 2015. According to the decree, a declaration was made that the applicant had become entitled to be registered as the proprietor of the suit property having acquired the same by adverse possession and the Chief Land Registrar was directed to cancel the registration of the respondent as the owner of the suit property and to register the applicant as the owner of the suit property. There is no indication in the purported decree as which judge heard the case and rendered judgment in favour of the applicant.

As at the time this suit was filed and the purported judgment obtained, the suit property was registered in the name of the respondent. Upon obtaining the purported judgment and decree, the applicant caused the decree to be registered on the register of the suit property on 23rd March, 2015 and had the respondent’s title cancelled and the suit property registered in his name on 8th May, 2015. On 22nd June, 2015, the applicant caused the suit property to sub-divided into four (4) portions namely Ngong/Ngong/69599, 69600, 69601 and 69602 after which the title of the suit property was closed. On 20th July, 2015, the applicant charged to the interested party, Progressive Credit Limited, one of the portions of the suit property, namely, Ngong/Ngong/69599 to secure a loan of Kshs. 1,000,000/=.

What is now before me is the respondent’s application brought by way of Notice of Motion dated 22nd February, 2017 in which the respondent has sought an order cancelling the entries made in the register of the suit property through which his title to the property was cancelled and the suit property registered in the name of the applicant and subsequently subdivided into four (4) portions. The respondent has also sought an order that the ownership of the suit property be reverted to him and that such other or further orders be made as may be necessary for the ends of justice to be met.

The respondent’s application was brought on the grounds that the applicant had falsely represented to the Land Registrar at Ngong that he had obtained a court order in this suit cancelling the respondent’s title and conferring upon the applicant the ownership of the suit property and that, acting on that false information, the Land Registrar made entries in the register of the suit property prejudicial to the respondent. The respondent averred that the applicant was a stranger to him and that he had never met him. The respondent averred further that he was never served with the Originating Summons.

The respondent averred that in December 2016, he learnt that his title to the suit property had been revoked and the suit property registered in the name of the applicant pursuant to an order purportedly issued in this suit. The applicant averred that he came to court and perused the court file and found that the purported order was not issued by the court. The respondent averred that the applicant subdivided the suit property and used a portion thereof as a security to obtain a loan. The respondent averred that after confirming that the purported order was fake he reported the matter to the police who instituted investigations with a view to preferring criminal charges against the applicant.

On 21st June, 2019, the court directed that the respondent’s application be served upon the applicant and the interested party, Progressive

Credit Limited. The applicant and the interested party were served and they appointed the firms of Munyasia & Co. Advocates and P. K. Mbabu & Company Advocates respectively to act for them. The applicant and the interested party did not respond to the application.

When the application came up for hearing on 4th February, 2020 the respondent's advocate Mr. Makori relied entirely on the grounds on the face of the application and the affidavit of the respondent filed in support thereof and urged the court to grant the orders sought as prayed. The applicant's advocate, Mr. Munyasia told the court that the applicant had no objection to the application while the interested party's advocate Ms. Nzuki left the matter to court.

I have considered the respondent's application together with the affidavit filed in support thereof. It is clear from the court record that the order pursuant to which the respondent's title was cancelled and the applicant registered as the proprietor of the suit property did not come from this court. The order was a forgery created by the applicant to fraudulently dispossess the respondent of the suit property. A fake or a fraudulent order is a nullity and as such cannot confer any interest in a property upon a party. The Land Registrar was not supposed to act on such order.

I am of the view that it should be a standard practice for all Land Registrars to confirm with the court the validity of any order presented to them for registration before registering the same. If that was done, the situation that has given rise to the present application would not have arisen. The respondent having brought to the attention of the Land Registrar the fact that he had made entries in the register of the suit property on the basis of a fake court order, the Land Registrar should have taken the first opportunity to reverse the entries. It was not necessary for the respondent to come to court. A letter from the Deputy Registrar of this court to the Land Registrar to the effect that the said order was not made by this court was sufficient. Since the fake order was not made by the court, it was not necessary for the court to set it aside.

The applicant's act of filing this suit for the purposes of obtaining a fake court order in furtherance of his fraudulent scheme to deprive the respondent of the suit property was an abuse of the process of the court. The court has inherent power to stop abuse of its process. I find merit in the respondent's application. The entries that were made in the register of the suit property on the basis of an order that was purportedly issued in this suit cannot be allowed to stand. For the foregoing reasons, I hereby make the following orders;

1. This suit is struck out as an abuse of the process of the court.
2. The Land Registrar shall forthwith cancel entries numbers 6, 7, 8 and 9 that were made in the register of Ngong/Ngong/4308 on 23rd March, 2015, 8th May, 2015 and 22nd June, 2015.
3. The sub-division of Ngong/Ngong/4308 that gave rise to Ngong/Ngong/69599, 69600, 69601 and 69602 is cancelled.
4. The titles and registers for Ngong/Ngong/69599, 69600, 69601 and 69602 and all entries therein are cancelled.
5. For the avoidance of doubt, the charge registered against the title, Ngong/Ngong/69599 on 20th July, 2015 in favour of Progressive Credit Limited is cancelled.
6. The applicant shall pay to the respondent and the interested party the costs of the application.
7. The National Police Service, Directorate of Criminal Investigations, Ongata Rongai Police Station shall ensure that the investigations on the fake court order are speedily brought to a conclusion and persons suspected to have been involved in the creation of the same charged in a court of law.

Delivered and Dated at Nairobi this 10th Day of February 2020

S. OKONG'O

JUDGE

Ruling read in open court in the presence of;

Mr. Mutuku h/b for Mr. Munyasia for the Applicant

N/A for the Respondent

C. Nyokabi- Court Assistant