



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC NO. 32 OF 2019

NICHOLAS ACHILA & 5 OTHERS.....PLAINTIFFS

=VERSUS=

STEPHENE WAINAINA & 2 OTHERS.....DEFENDANTS

=AND=

KILONZO GEOFFREY WAMBUA and or the law firm of

WAMBUA KILONZO & CO.ADVCOATES.....INTERESTED PARTY

RULING

1. The Plaintiff/ Applicants filed a suit against the Defendants/ Respondents seeking permanent injunction against the Defendants/ Respondents in respect of LR No.209/14475 (IR No. 96998) (suit property). The Applicants contemporaneously filed a Notice of Motion dated 5th February 2019, in which they sought the following orders:

1) Spent

2) Spent

3) That the Defendants / Respondents and or the Interested Party whether by themselves or their servants or their agents or their advocates or their cronies and collaborators or any other in their names be and are hereby restrained by a permanent injunction from doing the following acts or any of them; that is to say ;trespassing onto or into, disposing or attempting to dispose of, selling and or attempting to sell and or marketing for sale, or otherwise completing and or attempting to complete any transfer, lease or any transaction whatsoever, so as not to interfere with the true ownership of the property known as LR No. 209/14475 (Title No.I.R 96998) in any manner whatsoever.

4) That an order be and is hereby made to be served upon the Chief Land Registrar to the effect that during the pendency of this suit ALL transactions and or registration of any transaction of whatever nature in the property known as LR No. 209/14475 (Title No.I.R 96998) be and is hereby prohibited.

5) That an order be and is hereby given directed to Kilonzo Geoffrey Wambua and or Wambua Kilonzo & Co. Advocates to forthwith and in any event not later than seven days (7) upon being served with this order, to release to Samson Masaba Munikah and or the law firm of Munikah & Company Advocates all documents in the custody of Kilonzo Geoffrey Wambua and or Wambua and Kilonzo Advocates relating to the property known as LR No. 209/14475 and in particular original lease title No. I R 96998 and the Transfer relevant thereto, in favour of Energoprojekt Engineering and Contracting Company.

6) That when granted the orders to be served upon the OCPD Embakasi to enforce compliance of the same and providing appropriate security, accordingly.

7) That the Plaintiffs be at liberty to apply for such further and or other orders and or directions as this Honourable Court may deem just to grant in the interest of justice and in the circumstances.

8) That costs occasioned by this application be taxed and paid by the Defendants/Respondents and the Interested Party/ Respondent to the Plaintiffs.

2. On 19th July 2019, the Respondents filed a notice of preliminary objection on the ground that the Applicants have no locus standi to bring this suit and that the suit is *scandalous, frivolous, vexatious* and is otherwise an abuse of the process of the Court.
3. On 3rd October 2019, the court directed that the application dated 5th February 2014 as well as the preliminary objection were to be disposed by way of written submissions. The Applicants were to file and serve their submissions within 14 days. The Respondents were to file theirs within 14 days after service. As at 26th February 2020 when the matter came up for mention for purposes of conformation of filing submissions, no party had filed their submissions. The Court directed that the Applicants were to file their submissions within 10 days and the Respondents were to file theirs within 14 days of being served.
4. The Applicants filed their submissions on 13th March 2020. The interested party filed their submissions on 27th February 2020. The Respondents through their letter of 10th March 2020 addressed to the Applicants' advocate with a copy to the court indicated that the Applicants had not served them with their submissions and that they were going to file their submissions within 14 days. I have not seen any submissions filed by the Respondents as at the time of writing this Ruling.
5. The suit property was a subdivision of LR No.209/10820 measuring 5 acres which was registered in the names of Dusan Construction Company Limited and Energoprojekt Engineering and Contracting Company as tenants in common in shares of 2:3 respectively. Upon subdivision, this property yielded the suit property which is 3 acres registered in the name of Energoprojekt Engineering and Contracting Company and LR 209/14476 registered in the name of Dusan Construction Company Limited. LR No. 209/14476 was later transferred to Stephen Kyalo Mulinge (Deceased). The property was later registered in the name of the Deceased's son Mr Charles Ngalaka Mulinge.
6. The Applicants contend that they were employees of the two companies whose directors relocated to U.S.A and Yugoslavia in 2005 and that their whereabouts are not known. The Applicants contend that they have been taking care of the properties of their employers and that they have since been kicked out of the suit property. They contend that the original title to the suit property is held by the interested party whom they suspect could be out to take away their employers property through unlawful means.
7. The Applicants contend that in 2003, there was a suit which was filed that is **HCCC No. 60 of 2003 (Charles Ngalaka Mulinge Vs Dusan Construction Limited)** where an order was given that the interested party herein was to surrender the original title to the suit property to M/s Munikah & Co. Advocates but that the interested party did not surrender the title as per the court order. It is on this basis that the Applicants are seeking the orders enumerated in paragraph (1) herein above.
8. The Respondents opposed the Applicants' application through a replying affidavit sworn on 16th October 2019. The Respondents had also filed a notice of preliminary objection on 19th July 2019. The Respondents contend that the applicants are not being truthful in their affidavit. The Respondents state that the Applicants have no locus standi to bring this suit and that wrong parties have been sued. The Respondents state that they have no interest in the suit property and that their only interest is three properties known as LR No.209/21278, LR NO. 209/21279 and LR 209/21280 which are registered in the name of Savana Exporters Limited where they are directors.
9. The Respondents further argue that the allegations by the Applicants that the directors of the companies which they claim were their employers could not be traced are not true as there is a suit which was filed by one of the companies that is ELC 24 of 2008 (**Dusan Construction Limited Vs S M Munikah T/A Munikah & Co. Advocates**) where judgment was delivered on 11th October 2017. It cannot therefore be said that the directors left the country in 2005 and could not be traced.
10. The interested party opposed the Applicants' application through a replying affidavit sworn on 3rd April 2019. The interested party contends that the Applicants' application is bad in law and is made without disclosure of material facts. The interested party denies ever interacting with the Applicants or the Respondents. The interested party contends that the Applicants have no locus standi to bring this suit. The interested party denies all the accusations leveled against the firm.
11. The Managing Director of Energoprojekt Engineering and Contracting Company Limited had given instructions to the firm to evict squatters who had invaded the property. The firm evicted the squatters after which the firm received instructions to sell the suit property to Multiple Hauliers Ltd. The original title to the suit property was released to Multiple Hauliers limited but the transaction was not completed.
12. In 2008, officers from the Directorate of Criminal Investigations summoned the deponent to their offices along Kiambu Road. He recorded a statement after which he disclosed that the original title was with Multiple Hualiers Limited. He accompanied an officer to the offices of Multiple Hauliers Limited where the title was retrieved in the presence of an advocate of Energoprojekt Engineering and Contracting Company Limited. The title was taken for further investigations. The interested party therefore states that it will not serve any purpose to grant an order that they produce a title which they do not have.
13. In a further affidavit sworn on 7th February 2020, the Applicants state that Article 22 of the Constitution allows them to bring a suit on behalf of the two companies who were their employers. The Applicants state that the Respondents have not stated how the three properties which they own were transmitted to them. The Applicants further argue that the issue of titles held by the Respondents is a subject of criminal investigations and that the Respondents have been summoned to explain the titles which they have.
14. I have carefully considered the Applicants' application as well as the opposition to the same by the Respondents and the interested party. I have also considered the submissions by the applicants and the interested party. As I said before in this ruling, the Respondents did not file their submissions and if any were filed, then they are not on record. There are only two issues for determination in this application. The first one is whether the Applicants have locus standi to bring this suit. If the court finds that the Applicants have locus standi, then it will proceed to determine whether the Applicants have met the threshold for grant of an injunction or whether an order can be made for the release of the original title in respect of the suit property to M/s Munikah & Co. Advocates.
15. I have gone through the submissions of the Applicants and those of the interested party. Neither the Applicants nor the interested party

have submitted on the issue of locus standi. Locus standi is defined in Black's law Dictionary Tenth Edition as the right to bring an action or to be heard in a given forum. The Applicants have clearly stated that they have brought this suit on behalf of the two companies. They state that the directors of the two companies left Kenya in 2005 and that they have never heard from them. In their further affidavit, the Applicants state that Article 22 of the Constitution permits them to bring a suit on behalf of the two companies. Article 22 (1) and (2) of the Constitution provides as follows:-

(1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—

(a) a person acting on behalf of another person who cannot act in their own name;

(b) a person acting as a member of, or in the interest of, a group or class of persons;

(c) a person acting in the public interest; or

(d) an association acting in the interest of one or more of its members.

16. The owners of the property before subdivision were Dusan Construction Company Limited and EnergoProjekt Engineering and Contracting Company Limited. These are companies which are capable of filing their own suits. The Applicants are neither shareholders nor directors of the two companies. The Applicants therefore have no capacity to bring a suit on behalf of the company which is the registered owner of the suit property. Article 22 (2) (a) of the Constitution allows a person to bring proceedings on behalf of another person who cannot bring the proceedings in their own name.

17. In the instant case, there is no evidence that EnergoProjekt Engineering and Contracting Company Limited is unable to bring proceedings on its own behalf. Whereas the Applicants claimed that the directors of the two companies left Kenya in 2005, there is evidence that in 2008, one of the two companies filed a case against their lawyers M/s Munikah & Co. Advocates. This suit was determined on 11th October 2017 and the Plaintiff Company was represented in Court. The interested party has also filed an affidavit showing that as late as last year, the directors of the other company which is the registered owner of the suit property had given instructions to their law firm to act on their behalf regarding the suit property. It cannot therefore be said that the company cannot act on its own behalf. I therefore find that the Applicants have no locus standi to bring this suit. This is enough to dispose of this suit as well as the application but I will nevertheless demonstrate that the Application would not have succeeded even if the court had found that the Applicants had locus standi.

18. The Applicants are seeking an injunction which is an equitable remedy. He who comes to equity has to come with clean hands. It has been demonstrated that the Applicants are not being candid. They lied on oath that the directors of the two companies left Kenya in 2005 not to be heard. The contrary has been demonstrated. The Applicants therefore do not deserve any injunction. In any case the Applicants are not the owners of the suit property. There is no interest shown which can be capable of any protection.

19. Prima facie, the owners of the suit property are active in as far as the suit property is concerned. There is no basis upon which the Applicants can be granted an injunction as they do not have any prima facie case against the Respondents. The Applicants want title deed for suit property to be surrendered to M/s Munika & Co. Advocates. The said advocate is not a Plaintiff and the Applicants cannot litigate on behalf of the firm. If the law firm wants the title, they should move through HCCC No.60 of 2003 where the order for surrender of title was given. In any case, the interested party has shown where the original title is and therefore no order can be given in vain.

20. A party has to initiate proceedings where he/she has standing. The Applicants herein have no standing to bring this suit. I uphold the preliminary objection by the Respondents and proceed to strike out the entire suit as well as the application with costs to the Respondents and the interested party.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 14th day of May 2020.

E.O.OBAGA

JUDGE

In the virtual Presence of:-

Mr Kobado for Interested Party.

Court Assistant: Hilda

E.O.OBAGA

JUDGE