



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC NO.197 OF 2018

ANDREW MWANGI CHUI & ANOTHER.....PLAINTIFFS

=VERSUS=

HASS PETROLEUM (K) LIMITED.....DEFENDANT

RULING

Background.

1. This is a Ruling in respect of three applications. The first application is dated 24th April 2018. It is brought by the Plaintiffs and it seeks an injunction against the Defendant restraining it from interfering with *LR NO.12062/915* measuring *0.8094* hectares. The second application is dated 20th December 2018. It is brought by the Defendant and it seeks an injunction against the Plaintiffs from interfering with *LR NO.26719 IR NO.122352* measuring *0.2073 hectares*. The third application is dated 20th August 2019. It is brought by the Defendant and it seeks the same prayers as in the second application. The second and third applications will therefore be dealt with together.

2. The 1st Plaintiff is a male adult who is a director in the 2nd Plaintiff Company. The Defendant is a Limited Liability Company registered under the provisions of the Companies Act Laws of Kenya. The history of this suit can be traced to an allotment letter dated 10th August 1981 of part of *LR No.12062/R* to Mariani Auto Nursery for establishment of a Nursery School. The 1st Defendant was by then trading under Mariani Auto Nursery School. The allotment was by the defunct Nairobi City Council. When Nairobi City Council was disbanded and in place Nairobi City Commission came in, the 1st Defendant applied to the Commission and was allotted the same plot with the same acreage.

3. On 26th April 1999, the 1st Defendant leased part of his land measuring *0.33 hectares* to Leonard Njoroge Kariuki for a monthly rent of *Kshs.60,000/=*. In October 1999, Leonard Njoroge Kariuki approached the 1st Defendant with a view to purchasing the portion he had been leasing. The 1st Defendant agreed and a sale agreement dated 7th October 1999 was drawn. The purchase price was *Kshs.12,000,000/=*. The purchaser paid *Kshs.1,660,000/-* on execution of the agreement and the balance was to be liquidated by monthly installments of *Kshs.300,000/=*.

4. The purchaser made a few installments and defaulted in paying the agreed purchase price. The 1st Defendant was forced to file a suit against him in *Nairobi HCCC No. 139 of 2009* which was later transferred to the Environment and Land Court where it became *ELC 1074 of 2015*. Among the prayers in this suit were for a declaration that the agreement between the two was null and void, eviction of the purchaser and payment of mesne profits and costs of the suit. In 2010, the 1st Defendant discovered that the purchaser, Leonard Njoroge Kariuki had clandestinely obtained title in respect of the portion he had intended to buy. Title was obtained on 1st February 2008 under *LR No.26719 IR 122352*.

5. The purchaser **Leonard Njoroge Kariuki** was operating a Petrol Station on the portion he intended to buy. In 2004 he filed a suit against Fuelex Kenya Limited who were supplying him with fuel. The supplier filed a counter-claim seeking monies owed to it by **Leonard Njoroge Kariuki** who was trading under **Lennjoka Filling Station**. The Plaintiff's suit was dismissed after the Plaintiff had been denied an adjournment and the Defendant proceeded with its counter-claim. Judgment was delivered in favour of the Defendant. On 6th March 2012 for *Kshs.24,053,472/=*.

6. The Judgment debtor *M/s Leonard Njoroge Kariuki* was unable to pay. The Decree Holder *M/s Fuelex Kenya Limited* advertised *LR No.26719 IR 122352* for sale in a public auction. The property was sold in a public auction where Dennis K. Mwangi emerged the highest bidder by paying *Kshs.23,000,000/=* on 3rd April 2014. On 28th October 2015, *Dennis K Mwangi* entered into a sale agreement with the Defendant in this case where the property was sold for *Kshs.50,000,000/=*.

7. As this suit was pending before Court, Judgment was delivered in *ELC 1074 of 2015* on 23rd October 2018. The Decree Holder proceeded

to execute the decree by removing the underground tanks on **LR No.26719 IR 122352**. This is what prompted the Defendant in this case to file the two applications which are described hereinabove as the second and third applications respectively.

The first application.

8. The 1st Applicant in this application has since processed a lease in his name and the land he claims is now under **LR No. 12062/915**. This lease comprises the part being claimed by the Respondent under **LR No. 26719 IR 122352**. This application was filed after the Respondent came to the disputed property seeking to secure it. The Respondent stopped its moves after the Applicant sought the intervention of the police, District Commissioner Embakassi West, and officials of the Nairobi City County. The Applicant argues that it is necessary for an injunction to issue to restrain the Respondent from interfering with the disputed property.

9. The Respondent contends that it is the registered owner of the disputed property having been registered as such pursuant to a properly court sanctioned process which originated from a public auction. The Respondent argues that the title held by the Applicant may be fictitious and does not refer to the disputed property. The Respondent further argues that the properties being claimed by it and the Applicant are different in sizes. The Respondent further argues that the Applicant processed its lease when processing of leases had been put on hold and therefore any registration of lease within the period is illegal. The Respondent further argues that the Applicant has never been in possession of the disputed property since 1991 as alleged and that he has not met the threshold for grant of injunction.

10. In a further affidavit by the Applicant in response to the Respondent's replying affidavit, the Applicant gives the history of the disputed property which has been captured in the background given hereinabove. There is therefore no need to repeat the contents herein. The Applicant only adds that Leonard Njoroge Kariuki obtained the title to a property which did not belong to him and that the Applicant was not a party to HCCC No. 610 of 2004 and would not therefore have known what went on in the suit.

11. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions by the Respondent. The Applicant had been given 7 days within which to file his submissions from 18th February 2020. The Applicant did not file submissions and if any were filed, then they are not in the file. The only issue for determination is whether the Applicant has demonstrated that he has a prima facie case with probability of success.

12. From the materials placed before me, I have no doubt that the Applicant has demonstrated that he has a prima facie case. The history of this case as captured hereinabove shows that the disputed property was part of what had been allotted to the Applicant. The originator of the title which the Respondent has was initially a tenant of the Applicant. He later evinced an intention to purchase the disputed property but did not complete the purchase. This notwithstanding, he went ahead to procure title which is now the source of this suit. The Applicant has a decree in ELC 1074 of 2015 for eviction of Leonard Njoroge Kariuki. This decree had not been stayed or varied. I therefore find that the applicant's application is merited. I allow the same in terms of prayers (3) and (4) of the Notice of Motion dated 25th April 2018.

It is so ordered.

The second and third Applications.

13. The Applicant in the two applications was seeking an injunction against the Respondents from interfering with **LR No. 26719 IR No.122352** until hearing and determination of the first application and the suit herein. The grounds for these applications is that the Respondents had gone to the disputed property and invaded it and proceeded to remove the underground tanks. The Applicant therefore argues that the Respondents' actions are meant to render the suit herein an academic exercise.

14. The Respondents have opposed the Applicant's application arguing that the 1st Respondent had been embroiled in litigation with Leonard Njoroge Kariuki in ELC 1074 of 2015 wherein a decree was issued in favour of the 1st Respondent. The 1st Respondent moved to execute the decree therein and it is therefore not true as the Applicant argues that the 1st Respondent went in the company of hired goons.

15. In a further affidavit, the Applicant denies knowledge of the battles between the 1st Respondent and Leonard Njoroge Kariuki whom it only knows as the previous registered owner of the disputed property. The Applicant therefore argues that the decree of eviction is ineffectual against it as the said Leonard Njoroge Kariuki had ceased to be the owner of the disputed property.

16. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondents. I have also considered the submissions by the Applicant. As I said hereinabove while dealing with the first application, the Respondents did not file submissions. The only issue for determination is whether an injunction should be granted by the Court in the manner prayed for.

17. To begin with, the Applicant has not filed any counter-claim which would have formed the basis for an injunction. The law is clear that an injunction must be based on a suit. I have also found out that from the materials presented before me, the disputed property is part of what was allotted to the 1st Respondent then trading as Mariani Nursery School. An injunction has already been granted in favour of the Respondents. In the circumstances, I find no merit in these applications which are dismissed with costs being in the cause.

It is so ordered.

Dated, signed and delivered at Nairobi on this 7th day of May 2020.

E.O.OBAGA

JUDGE

In the absence of parties who had been notified of the date of delivery of Ruling.

Court Assistant: Hilda

E.O.OBAGA

JUDGE