



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 374 OF 2015

NURU ABDULLA AHMED.....1ST APPELLANT/APPLICANT

MOHAMMED AILA JIBO..... 2ND APPELLANT/APPLICANT

- V E R S U S -

ABDIRASHID ADAN HASSAN.....RESPONDENT

RULING

1) The subject matter of this ruling is the motion dated 12.11.2015 taken out by the appellants herein whereof they seek for the following orders:

1. Pending the hearing and determination of this motion, there be a stay of execution of the order of 7th July 2015 and the status quo ante obtaining prior to the issuance of the order of 7th July 2015 in Nairobi CMCC 7112 of 2014 between the parties herein and the subsequent effecting of the said order be restored, to wit, that the 1st appellant (NURU ABDULLA AHMED) possession and occupation of L.R no. 36/11/347th street, Eastleigh situate in the city of Nairobi within the Nairobi county.

2. Pending the hearing and determination of the appeal herein, , there be a stay of execution of the order of 7th July 2015 and the status quo ante obtaining prior to the issuance of the order of 7th July 2015 in Nairobi CMCC 7112 of 2014 between the parties herein and the subsequent effecting of the said order be restored, to wit, that the 1st appellant (NURU ABDULLA AHMED) possession and occupation of L.R no. 36/11/347th street, Eastleigh situate in the city of Nairobi within the Nairobi county.

3. A temporary injunction do issue, pending the hearing and determination of this application, restraining the respondent ABDIRASHID ADAN HASSAN by himself, his invitees, servants, agents, licensees, and/or tenants or otherwise howsoever from trespassing, remaining upon, occupying, leasing, licensing, letting for a peppercorn fee, construction upon, carrying on any form of business, or otherwise howsoever dealing in the parcel of land, L.R no. 36/11//347, 8th street, Eastleigh, Nairobi, within the Nairobi County.

4. A temporary injunction do issue, restraining the respondent, ABDIRASHID ADAN HASAN by himself, his invitees, servants, agents, licensees, and/or tenants or otherwise howsoever from trespassing, remaining upon, occupying, leasing, licensing, letting for a peppercorn fee, constructing upon, carrying on any form of business, or otherwise howsoever dealing in the parcel of land, L.R. No. 36/11/347, 8th street Eastleigh, Nairobi., within the Nairobi County,

until the hearing and determination of the appeal herein.

5. The costs of this motion be to the appellants in any event.

2) The motion is supported by two affidavits sworn Nuru Abdulla Ahmed. When the motion came up for interpartes hearing, this court with the concurrence of the parties gave directions to have the motion disposed of by written submission. At the time of writing this ruling the appellants were the only parties who had filed their submissions.

3) Before considering the merits or otherwise of the motion, let me state the brief facts giving rise to the filing of this motion. On 3.6.2015, Hon. Obulutsa, learned Chief Magistrate issued an order reinstating the orders of injunction issued on 9th December 2014. The aforesaid order restrained the appellants herein from encroaching, interfering with the ownership and or from trespassing on the suit property plot no. 36/II/347 situated at Eastleigh Section 2, 8th Street, Nairobi pending the hearing and determination of the suit before the Chief Magistrate's Court, Nairobi. The O.C.S, Pangani Police Station was also ordered to enforce the orders. Being aggrieved, the appellants filed this appeal to challenge the decision. The appellants have now filed the motion dated 12.11.2015 praying for the maintenance of the *status quo ante* so as the suit property concerned is preserved.

4) It is the argument of the appellants that the order issued on 9.12.2014 did not factor in the fact that the appellants have been living on the suit property known as L.R no. 36/11/347 situate in Eastleigh, Nairobi and are still residing therein. The appellants further pointed out that the respondents had failed to present a certificate of title to prove ownership of the suit property nor a sale agreement. The appellants further pointed out that there is no way the respondent could have purchased the suit property from the estate of Hurbai Jamal, deceased yet there is no evidence that letters of administration had been obtained. The appellants argued that the orders issued on 9.12.2014 were obtained on falsehoods made by the respondent before the trial court with the sole intention of deceiving the court to issue orders to evict the appellants who were innocent. The appellants beseeched this court to restore the *status quo*. The appellants further argued that what the respondent achieved by means of an interlocutory injunction given by the trial court was a mandatory injunction in the form of an eviction of the appellants from the suit property without undergoing a full trial. With respect, I agree with the submissions of the appellants that the orders issued by the trial court on 9.12.2014 is akin to issuing final orders in a suit vide an interlocutory application. The appeal therefore has strong and arguable points which may dissipate if the orders to maintain status quo pending appeal are not granted.

5) In the end, I find the motion dated 12.11.2015 to be meritorious. The motion is allowed in terms of prayers 3 and 5 with costs abiding the outcome of the appeal.

Dated, Signed and Delivered in open court this 2nd day of March, 2017.

J. K. SERGON

JUDGE

In the presence of:

.....for the Appellant

.....for the Respondent