



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
MILIMANI LAW COURTS
ELC NO. 667 OF 2013

REUBEN OPILE WILSON.....PLAINTIFF

VERSUS

LINET ADHIAMBO AMOLLO.....DEFENDANT

RULING

On **5th June 2013** the Court granted an order of temporary injunction against the Defendant restraining her from alienating, trespassing, or interfering with the Plaintiff's quiet enjoyment, possession and occupation of **L.R. No. 209/11057 Villa Franca** (the suit property). The Court also ordered an inhibition against the registration of any form of registration in the ownership, leasing, sub-leasing, allotment, user, occupation or any kind of right, title or interest in the suit property. It is these orders that the Plaintiff seek to be confirmed pending the determination of the suit.

The Plaintiff swore an affidavit on **5th June 2013** in support of the application and a further affidavit sworn on **11th August 2014**. The Plaintiff deposed that he is the registered owner of the suit property and availed a title in his favour, land rent invoices, land rates demands and water utility bills to show ownership. The Plaintiff stated that the suit property was initially described as **Plot No. 34 Villa Franca – Nairobi** and annexed an allotment letter in his favour dated **2nd November 1987**. Upon being issued with the title deed, the Plaintiff states that he commenced construction of a residential house completing the first floor and the walls of the second floor when the project stalled. On returning to complete the project, he found that the Defendant had put a roof over the structures and rented out to tenants. On conducting a search at the Lands Office, he learnt that the deed file had gone missing and that the Defendant was in the process of changing the names.

The application was opposed by the Defendant vide a Replying Affidavit and a Supplementary Affidavit sworn on **26th June 2014** and **2nd October 2014**, respectively. It was her disposition that she acquired the suit property through an allotment letter and paid for the same in **1987**. Subsequently, she received title deed for **L.R. No. 209/11057** on **25th July 1990**. The Defendant contended that her ownership is also evidenced by the payments of rates. It is was her deposition that she commenced developing the suit property by clearing the bushes and securing it with barbed wire fence which she later removed and constructed stone walls with trees. The Defendant maintained that she has been in occupation of the suit property since **1996** and did all the excavation works thereon contrary to Plaintiff's allegations.

The Plaintiff further filed submissions dated **16th September 2014**, which I have carefully read and

considered the authorities cited therein.

Both parties claim ownership of **L.R. No. 209/11057, Villa Franca** and have availed to this Court copies of Certificates of Title in their favour demonstrating ownership. The Plaintiff averred that he had commenced construction thereon which stalled and when he resumed, he found that the Defendant had put a roof and rented out to tenants. This averment was refuted by the Defendant who claimed to have excavated and constructed the building before renting out to her tenants. Evidently, the evidence produced by the Plaintiff at this stage as to its ownership of the suit property has been highly contested and contradicted by evidence produced by the Defendant,

This matter being highly contentious, it is safe for this court to maintain status quo and direct the matter to proceed to full hearing where all parties will be afforded an opportunity to give evidence and the veracity of their evidence tested on cross-examination. This was the finding of their in the case of **Ougo v Otieno & another Civil Appeal No. 3 of 1987 (1987) eKLR** where they held that the general principle is that where there are serious conflicts of facts, the trial court should maintain status quo until the dispute has been decided on trial.

In that regard, I confirm the orders granted on **5th June 2013**, pending the hearing and determination of the suit. Costs of the application shall be in the cause.

It is so ordered.

Dated, Signed and Delivered this **10th** day of **July, 2015**

L.GACHERU

JUDGE

In the Presence of:-

Mr Analo holding brief for Mbichire for the Plaintiff/Applicant

Mr Dola for the Defendant/Respondent

Lerionka: Court Clerk

L.GACHERU

JUDGE