



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
ELC NO 354 OF 2009

ROBERT MUTISO LELLI.....PLAINTIFFS/RESPONDENTS

VERSUS

KENYA MEDICAL TRAINING COLLEGE.....DEFENDANT/APPLICANT

THE ATTORNEY GENERAL.....1ST INTERESTED PARTY

THE COMMISSIONER OF LANDS.....2ND INTERESTED PARTY

RULING:

The matter coming up for determination is the Notice of Motion dated 29th May, 2013 brought by the 1st Defendant/Applicant. The said application is brought under **Articles 68 and 162(2)** of the Constitution, **Sections 150, 161(2) and 162** of the **Land Act No.6 of 2012**, **Sections 3, 13(1), 13(2)d, 13(7)(a), 19(3) (1) and 30(1)** of the Environment and Land Court Act No. 19 of 2011, Sections 52 of the Transfer of Property Act, Sections 68 and 101 of the Land Registration Act, Sections 1A, 1B and 3A of the Civil Procedure Act, cap 21 Laws of Kenya. The applicant seeks for these orders:-

- a. *That an Order of inhibition of registration of any dealings with LR No's 209/14270 and LR No. 209/14272 by the Chief lands Registrar be issued pending the hearing and determination of this suit .*
- b. *That costs be provided for.*

The application was supported by the grounds that were stated on the face of the application.

These grounds are; Plaintiff/Respondent filed a Plaint dated 17th July, 2009 and sought Orders against the 1st Defendant /Applicant in respect of LR No. 209/14272 on the basis that he is the registered owner thereof. Further that the Applicant sought orders for cancellation of the titles issued by the Commissioner of Lands to the Plaintiff for LR Nos. 209/14270 and 209/14272 on the basis that they were part and parcel of unsurveyed plot Nos. 61-64 which had been allocated to it for future expansion.

In addition, the Respondent had made threats to forcefully evict the occupants from the suit property who were the employees of the applicant on the basis that he wants to sell the same and on 12th July, 2012, the Respondent actualized the threat when he forcefully evicted the said employees and demolished their

houses on the suit premises . It was the applicant’s contention that there is threat of the suit property being changed its particulars by the registered proprietors.

The application was supported by the annexed affidavit of **Olang’o Onudi**, the Chief Executive Officer of the applicant who averred that he is well versed with the issues surrounding LR No.209/14270 and LR.No.209/14272 as per the official records in his possession. He further averred that the Respondent has made threats to forcefully evict the occupants of the suit properties who are employees of the applicant on the basis that he wanted to sell the same as evidenced by annexure 002.

Further that the Respondent actualized the threats when he forcefully evicted the said employees and demolished their houses from the suit properties as per annexure 003. He further contended that the Court did give an Order restraining the Chief Land Registrar from registration of any dealings with the said LR NO. 209/14270 and 209/14272 but the applicant discontinued the said application. The deponent further averred that there is a threat of the suit properties changing particulars of the registered proprietor and the same should be preserved pending the hearing and determination of this suit.

The application was opposed and one, **Robert Mutiso Lelli** , the Plaintiff herein swore a Replying Affidavit. He stated that he is the registered owner of LR No. 209/14270 and 209/14272 along Matumbato Road, Upper Hill Nairobi. He averred that the applicant’s application is mischievous and made in bad faith as he bought the properties in the year 2000 and he has not disposed it or part of it. Further that the 1st Defendant knows the two parcels of land are private properties and that their case is driven by ulterior motive as they had never enforced their rights before the Respondent filed this case.

He further averred that the suit properties are private properties and not public properties and the 1st Defendant has no basis seeking for cancellation of private properties, where titles were issued more than 5 years ago. He also contended that the eviction of the trespassers was pursuant to Court Order and that there is a similar application dated 14th October, 2009 which is pending in Court.

Respondent also averred that the present suit is vexatious and an abuse of the court process and it does not have any merit. It was further contended that no evidence that the suit land would change hands as he has been in possession of the same for more than 12 years and therefore the applicant is underserving of the Orders sought .

Further , one **Joseph Aketch Donde**, the chairman of the Board of Kenya Medical Training College(therein after referred to as K.M.T.C) swore an affidavit and averred that K.M.T.C has been having dispute over plots No. LR NO.209/14270 and 209/14272 along Matumbato Road, Upper Hill. That when the matter went before the Board, one **David Odeng**, the Administrative Manager informed the Board,that K.M.T.C had not been allocated the plots on dispute and neither did it have titles to the same.

The parties herein canvassed this application by way of written submissions. I have now carefully considered the instant application and the written submissions and the relevant laws and I make the following findings;

The application is basically anchored under **Section 68** of the **Land Registration Act**, and **Section 52** of the **Transfer of Property Act** (now repealed). The said Section reads as follows:

Section 68, of **Land Registration Act** provides that:-

*“ The Court **may** make an order (hereinafter referred to as an inhibition) inhibition for a particular time, or with the occurrence of a particular event or generally until a further order , the registration of any dealing with any land, lease or charge”.*

Further **Section 52**, of the Transfer of Property Act, 1882 states as follows:-

“.....during the active prosecution in any court having authority of a contentious suit or

proceeding in which any right to immovable property is directly and specifically in question , the property cannot be transferred to or otherwise dealt with by any part to the suit or proceeding so as to affect the rights of any other party thereto.....except under the authority of the court and on such terms as it may impose”.

The Section therefore grants the court the discretion to issue inhibition Order to inhibit any dealing on any parcel of land and on such terms as may impose.

The Plaintiff filed this suit in the year 2009. Thereafter, the 1st Defendant filed its Defence and counter-claim. The 1st Defendant also filed an application under Certificate of Urgency dated 14th October, 2009 and sought for injunctive orders against the Plaintiff from evicting its employees . It is evident from the court record that the said application was never prosecuted but was abandoned.

It is also the Plaintiff’s allegation that he evicted the people who were allegedly illegally occupying the suit plot on the basis of a court order issued in the year 2003.subsequently the 1st Defendant filed another application dated 1st August 2012 and sought for restraining Orders. However, the 1st Defendant later withdrew the said application but filed the instant application on 29th May, 2013.

What is not in doubt is that the Plaintiff and the 1st Defendant have had a tussle of war over the suit land. In the Plaintiffs annexure RML3 the Director of the 1st Defendant, **Dr.J C Kibosia** had stated in the letter dated 11th June, 2003 stated as follows:-

“the truth of the matter is that you have been having a dispute with people we have no records of...please sort out your problems without dragging me into it”.

The above letter was written in the year 2003. It is therefore clear that the 1st Defendant was aware of the Plaintiff’s claim to the suit properties. The Plaintiff thereafter filed this suit. Though the 1st Defendant claims to have been allocated this parcels of land in 1996,it did not file any suit to have its rights restored. The 1st Defendant filed its application after the Plaintiff has finally filed his claim.

The 1st Defendant also claims that the Plaintiff intends to sell the land to third parties. However it is evident that Plaintiff has been in possession of this land since 2001 and has not disposed of it. No evidence that the Plaintiff intends to dispose of the suit land now.

There is evidence that the Plaintiff evicted some people from the suit land. The Court cannot issue an Order to restrain what has already happened. See the case of **Esso Kenya Ltd Vs Mark Makwata Okiya, Civil Appeal No. 69 of 1991.**

Having now considered the Notice of Motion dated 29th May, 2013 and the and the written submissions and the relevant provisions of law, I find the applicant’s Notice of Motion not merited.

Consequently, the court dismisses the said application entirely with costs to the Plaintiff/Respondent.

It is so ordered.

Dated, signed and delivered this **11th** day of **July , 2014**

L.GACHERU

JUDGE

In the Presence of:

Mr Muturi holding brief for Mr.Mutinda for the Plaintiff/Respondent

M/s Gitau holding brief for Tiengo for the 1st Defendant/Applicant

None attendance for the 1st interested party

None attendance for the 2nd Interested party Kamau: Court Clerk

L.GACHERU

JUDGE

11/7/2014