



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC CASE NUMBER 1532 OF 2013

TRIKUTI INVESTMENTS LIMITED.....PLAINTIFF

=VERSUS=

ALASOW HASSAN MOHAMMUD.....1ST DEFENDANT

SALAT SAMAN OLOW.....2ND DEFENDANT

WANG WANG CENTRE LIMITED.....3RD DEFENDANT

LAND REGISTRAR NAIROBI.....4TH DEFENDANT

THE NATIONAL LAND COMMISSION.....5TH DEFENDANT

RULING

Background.

1. This is a ruling in respect of a notice of motion dated 13th August 2020. This motion was filed online under certificate of urgency during the recess. The court gave directions on 17th August 2020 that the application be served for inter-partes hearing on 16th September 2020. There were no directions given as to the filing of written submissions.

2. On the 16th September 2020, Mr Orege for the Applicant and Mr Kamau for 4th Respondent appeared virtually and informed the court that they had already filed their submissions on 14th September 2020 and 4th September 2020 respectively. The court then gave a date for ruling under the impression that there had been directions given as to the disposal of the application.

3. As I was preparing this ruling, I noticed from the record that on 13th July 2020, the advocates for the parties herein appeared before the Deputy Registrar where counsel for the Plaintiff /Respondent informed the Deputy Registrar that the Plaintiff had appointed a new Advocate. The Plaintiff's previous advocate had been allowed to cease acting on 17th June 2020.

4. A further perusal of the e-filing platform shows that the firm of Khamati, Githinji, Ashiruma & Chege Advocates filed notice of change of Advocate on 16th September 2020, taking over from the firm of Wandabwa & Co. Advocates who were previously acting for the Plaintiff.

Applicant's Application.

5. In the Application filed by the Applicant, the Applicant seeks the following orders: -

1) Spent

2) That pending the hearing and final determination of the application the Plaintiff either by itself, servants and or agents be restrained by orders of temporary injunction from entering all that parcel of land known as L.R No.1/1330 and LR No. 1/1331 (Hereinafter referred to as the suit property) , remaining therein, wasting the same or in any other manner whatsoever dealing with the property to the detriment of the 3rd Defendant.

3) That the Plaintiff be cited for contempt of this Honourable's Court order of 4th November 2014 and punished for the same.

4) That the Plaintiff be denied audience before this Honourable court until it shall have purged the contempt.

5) That the Plaintiff be ordered to purge the contempt by vacating the suit property and moving any material illegally placed thereon before being granted any audience by this Honourable court.

6) That this Honourable court be pleased to grant any relief it deems fit and just in the circumstance.

7) The costs of this application be saddled upon the Plaintiff.

6. The Applicant contends that on 4th November 2014, the court granted an order of maintenance of status quo in the following terms:-

“ That the parties shall observe and maintain the present obtaining status quo where the 3rd Defendant is in possession of the suit property and no party shall sell, transfer or dispose of the suit property and or undertake any new development of a permanent nature until the suit is heard and determined”.

7. The Applicant states that on 8th August 2020, the Respondent through its agents in the company of violent goons forcefully gained entry into the suit property and deposited construction materials in flagrant breach of the order of 4th November 2014. The Applicant went and reported the incident at Kilimani Police Station. The Respondent's agent showed a letter of authority from the Respondent authorizing its agents to access the property. The Applicant on the other hand showed the police the order of 4th November 2014. At this juncture, the police advised the parties to maintain peace as the matter was before court and there were no orders from court requiring their involvement.

8. The Applicant further contends that their request to the Respondent to remove their building materials from the suit property has not been heeded and that instead, on 11th August 2020, the Respondent deployed additional goons to the suit property. It is on this basis that the Applicant is asking the court to grant the orders.

4th Respondents support to the Applicant's application.

9. The 4th Respondent who is the Land Registrar represented by the Attorney General filed grounds in support of the Applicant's application. The 4th Respondent contends that court orders ought to be respected and that as the orders of 4th November 2014 were given in the presence of counsel for the Plaintiff/Respondent, there is need to punish the directors of the company in order to stamp the authority of the court and safeguard its dignity.

Analysis.

10. While giving the background herein, it is clear that the Advocates for the Plaintiff /Respondent did not have an opportunity to be heard as they filed notice of appointment on 16th September 2020, the date this court reserved a date for ruling. The Applicant had filed an affidavit of service showing that they served the Plaintiff/Respondent through e-mail and through postal address which the Plaintiff/Respondent had given in one of their letters dated 16th July 2020. There was no evidence whether the e-mail went through or whether the letter was delivered.

11. The Plaintiff / Respondent is alleged to have invaded the suit property on 8th August 2020. I have gone through the proceedings in this file and notice that the Applicant had filed an application dated 9th June 2015 in which it sought a number of orders. Among the orders which the Applicant was seeking was discharge of the orders of 4th November 2014, an injunction restraining the Respondent from in any way interfering with the suit property. The Applicant also sought orders permitting it to construct on the suit property. All the prayers of the Applicant were disallowed save for the orders for amendment of the defence which had been allowed early on.

12. During the hearing of the aforesaid application, it was clear that the Applicant was complaining that the Plaintiff/Respondent was interfering with the suit property. The court observed that if there was any interference, which was not the case, the Applicant was at liberty to move the court for punishment for contempt. It is therefore clear that the Applicant is not being candid when it claims that the invasion was on 8th August 2020 when the Applicant had been complaining about interference from way back in 2015. The injunction which the Applicant is now seeking is the same injunction which was rejected by the court on 4th March 2016 as there was no need for the same then just as it is now in view of the subsisting orders of 4th November 2014.

13. Whereas I agree with the position in law that court orders have to be obeyed, in matters to do with contempt, a court has to be satisfied that indeed there has been breach of the court order. In ascertaining this, the court has to look at the entire case in a holistic manner so that one is not punished when there is no proof of the alleged contempt.

14. I have carefully looked at the order of 4th November 2014. The order was categorical that no party was to sell, transfer, dispose of the suit property or undertake any new development of a permanent nature until the suit is heard and determined. The Applicant has not tendered any evidence of sale, transfer or disposal or even construction of any new development of a permanent nature.

15. What the Applicant provided are photographs showing a lorry and a delivery note indicating number plates of vehicles which were to deliver sand and pictures of a person cutting down trees using a power saw. It is not in dispute that when the Applicant purchased the suit property from the 2nd Defendant, there were two houses, one of which was pulled down by the Applicant before the Plaintiff/Respondent moved to court and obtained injunctive orders preserving the remaining house. The letter of 16th July 2020 from the Plaintiff/Respondent authorized its agents to get into the suit property and refurbish the house which was there for lease. This did not amount to new construction of a permanent nature and in any case, it is clear that the court was alive to the fact that already there were structures which were on the suit

property and the order did not stop the Plaintiff/Respondent from accessing the suit property which it owned and had tenants as seen from the litigation preceding this one.

16. A party can only be denied audience if his or her conduct is making the court's work difficult. This case was filed in 2013 and all the Judges who have handled it have seen the need for an expedited hearing so that the ownership dispute can be determined. Towards this end, various Judges have given directions towards expeditious hearing but these efforts have been hampered by the numerous applications which have been filed particularly by the Applicant. This case is already part heard and should be heard and concluded as soon as possible.

Disposition

17. From the above analysis, I find that the Applicant has failed to prove any breach of the order given on 4th November 2014 or that the Respondent should be denied audience. I therefore proceed to dismiss the application dated 13th August 2020 with no order as to costs.

It is so ordered.

Dated, Signed and Delivered at Nairobi on this 15th day of October 2020.

E.O.OBAGA

JUDGE

In the Virtual Presence of : -

Mr Orege and Mr Muga for 3rd Defendant

Mr Kamau for 4th Defendant

M/s Masinde for 5th Defendant

Court Assistant: Hilda

E.O.OBAGA

JUDGE