



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MOMBASA

ELC NO. 55 OF 2020

TECHNOLOGY INVESTMENTS LTD.....PLAINTIFF

VERSUS

ASU KHANJI PATEL.....1ST DEFENDANT

REGISTRAR OF LANDS, MOMBASA..... 2ND DEFENDANT

RULING

(Application for injunction; plaintiff claiming interference from 1st defendant; defendants asserting that what the plaintiff claims to be her land is actually a road; plaintiff having title; nature of developments proposed by 1st defendant will massively alter the character of the land; important to preserve the subject matter of the case as it is pending conclusion of the dispute; injunction issued)

1. Through a plaint filed on 21 May 2020, the plaintiff averred that she is the registered proprietor of the land parcel MN/1/9596 located at Nyali in Mombasa. She pleaded that she purchased this property in the year 2017 for the sum of KShs. 100,000,000/= and took up possession. She complained that the 1st defendant had invaded the property, and in this suit, the plaintiff wishes inter alia to have the 1st defendant permanently restrained from the suit land and a declaration of ownership of the land.
2. Together with the plaint, the plaintiff filed an application seeking orders of injunction to restrain the 1st defendant from the suit land until the case is heard and determined. It is that application which is the subject matter of this ruling. To the supporting affidavit, the plaintiff has inter alia annexed a copy of the sale agreement, the transfer instrument, and the certificate of title.
3. The position of the respondents is that where the plaintiff's alleged plot is located is actually a road and the 1st defendant needs it in order to undertake some developments.
4. I did visit the disputed land on 2 October 2020 so as to familiarise myself with the same before making any ruling on the application. This visit to the site has assisted greatly in making me determine whether or not an injunction should issue and my delivery will therefore be pretty brief.
5. The plaintiff has displayed a certificate of title and prima facie she is the owner of the suit land. I am aware that the defendants claim that the plot in issue is a road, but the conclusion of whether or not it is actually a road or a good plot, can only be made after hearing the parties. For now, given that the plaintiff has title, however contested, it is important that an order of injunction do issue so as to preserve the suit property. The nature of developments that the 1st defendant proposes to undertake are massive, and if undertaken, will certainly and completely alter the character of the suit land which may cause the plaintiff irreparable loss. The balance of convenience thus tilts towards maintaining the land as it is until the case is heard and determined.
6. I will therefore issue an order restraining the defendants from entering, developing, or in any other way interfering with the suit land, until this case is heard and determined. I noted during the site visit that the 1st defendant's developments include making of gates that would access the suit land. Let these walls remain in the state that they currently are and no additional developments, including the placing of gates, should be done.
7. I think it is also important for the plaintiff not to undertake any developments in the suit land and I also order the plaintiff to maintain the suit land in the state that it currently is until the case is concluded.
8. The costs of this application will be costs in the cause.

9l It is so ordered.

DATED AND DELIVERED AT MOMBASA THIS 8TH DAY OF OCTOBER 2020

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

IN THE PRESENCE OF:

Mr. Angwara for the plaintiff/applicant

Ms Onyiego holding brief for Mr Onyony for the 1st defendant/respondent

Mr Nguyo for the 2nd defendant/respondent

Court Assistant; Wilson Rabongo