



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO. 130 OF 2020

KILIFI HOTELS LIMITED.....PLAINTIFF

VERSUS

OMAR GUMA MOHAMED.....1ST DEFENDANT

CHIEF LAND REGISTRAR.....2ND DEFENDANT

RULING

(Application for injunction; principles to be applied; plaintiff claiming to own the suit properties and complaining that the 1st defendant has started taking possession and destroying part of the developments; plaintiff further claiming that there are fraudulent dealings with the title orchestrated by both defendants; no evidence of any parallel title or other registrations in the register of the suit land; plaintiff however displaying title and prima facie therefore, she is the registered proprietor of the suit properties and the one entitled to possession; prima facie case established; application allowed)

1. This suit was commenced through a plaint which was filed on 21 September 2020. Together with the plaint, the plaintiff filed an application dated 15 September 2020 which is the subject of this ruling. That application is brought pursuant inter alia to the provisions of Order 40 of the Civil Procedure Rules, 2010, and Sections 68 and 69 of the Land Registration Act, 2012. It is basically an application for an injunction, seeking orders to restrain the 1st and 2nd defendants from trespassing, interfering with the plaintiff's quiet possession, leasing, transferring, charging, selling, subdividing, disposing and/or in any other way dealing with the parcels of land known as LR No. 10173 Grant No. CR 19906 and LR No. 10184 Grant No. CR 9907 (hereinafter "the suit properties") and/or any other titles arising therefrom, together with all other developments therein pending the hearing and determination of this suit. The applicant also wants orders of an inhibition to inhibit against any transactions relating to the suit properties and the OCS/PCPD Kilifi Police Station to ensure adherence to the orders. The application is supported by Adil Popat who is a director of the applicant. Despite being duly served, the 1st defendant has not entered any appearance and has filed no response to the application. The State Law Office, on behalf of the 2nd defendant, did not file anything to oppose the application and at the hearing of the motion, Mr. Wachira Nguyo, learned State Counsel, submitted that he will not be opposing the application. Nonetheless, I need to be satisfied that the application is merited especially as against the 1st defendant.

2. From the pleadings and the supporting affidavit, I can discern that the case of the applicant is that it is the owner of the suit properties. It is averred that on 4 September 2020, the applicant's advocates under the instructions of the applicant, visited the suit properties and found persons clearing them and demolishing the perimeter wall. The advocates of the applicant interrogated the said persons and they said that the 1st defendant/respondent is the current owner of the suit properties and he intends to subdivide the land. The advocates then visited the Kilifi and Mombasa Land Registry and found that there had been fraudulent and illegal transactions undertaken over the suit properties. Among the particulars of fraud pleaded are that there is illegal transactions and entries in respect of the titles over the suit properties. It is the position of the applicant that the 1st respondent with the aid of the 2nd respondent has orchestrated and executed a fraudulent scheme to arbitrarily dispossess the applicant of its property. In the suit, the applicant wishes to have orders for a declaration of ownership of the suit properties and a permanent injunction to restrain the respondents from the properties. The applicant also seeks orders to cancel all entries in the register of the suit properties and reflect the applicant as owner together with damages.

3. The supporting affidavit of Mr. Popat inter alia annexes the title documents to the suit properties. He has stated that he got wind of interference of the properties and he decided to send his advocates who then found persons clearing the land and demolishing the wall. He has stated that a complaint was registered at the Directorate of Criminal Investigations (DCI).

4. I have considered the application. This being an application for injunction, the applicant needs to demonstrate a prima facie case with a probability of success, and also show that she stands to suffer irreparable loss if the injunction is not granted. Where the court is in doubt, it will decide the application on a balance of convenience.

5. Having the above in mind, I have seen that the applicant has displayed title to the suit land. Title is prima facie evidence of ownership of the land shown therein as provided for in Section 26 (1) of the Land Registration Act, 2012, which is drawn as follows :-

(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

6. Since the applicant is the title holder, she has established, prima facie, that she owns the suit properties. It follows that being the title holder, it is the applicant who is entitled to possession of the suit properties. The 1st respondent has not come to court to demonstrate any right that he may have over the properties. I am therefore of the view that the applicant has demonstrated a prima facie case with a probability of success. If the 1st respondent continues with his acts of interference and demolition of the developments on the suit properties, the applicant stands to suffer irreparable loss. I therefore have no reason to deny the applicant the order of injunction to restrain the 1st respondent from the suit properties.

7. Although the applicant stated that there are fraudulent dealings over the properties, I have not been shown any. There is no parallel title annexed or any other sort of evidence that would point to any title in the name of the 1st respondent. In fact, I have no evidence of what fraudulent dealings the applicant is talking about. In absence of any, this would simply be a case of trespass. Be that as it may, I suppose that there is no harm in also issuing an order of inhibition as sought by the applicant.

8. I therefore make the following orders :-

i. That the 1st defendant and/or his servants/agents and any person acting on his instructions, is hereby restrained from entering, being upon, demolishing the wall or any other development on the suit properties or in any other way interfering with the plaintiff's quiet possession of the same until this case is heard and determined.

ii. That the OCS/OCPD of Kilifi Police Station to ensure that the above order is enforced.

iii. That the 1st defendant is hereby restrained from leasing, transferring, charging, selling, subdividing, disposing and/or in any other way dealing with the suit properties.

iv. That an order of inhibition is hereby issued inhibiting the registration of any disposition in the register of the suit properties pending the hearing and determination of this suit.

v. That costs of this application will be shouldered by the 1st defendant.

9. Orders accordingly.

DATED AND DELIVERED THIS 3 DAY OF NOVEMBER 2020

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA