



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI LAW COURTS

ELC CASE NO.952 OF 2016

ESQUIRE INVESTMENTS LIMITED.....PLAINTIFF

=VERSUS=

ATTORNEY GENERAL & 4 OTHERS.....DEFENDANTS

RULING

1. The Plaintiff/Applicant filed a Notice of Motion dated 3rd July 2018 in which it sought injunctive orders against the 5th defendant/respondent. The applicant also sought other orders to facilitate compliance with the orders of injunction. The applicant states that it is the registered owner of LR No.3734/28 along Muthangari Road, Lavington in Nairobi (suit property). The respondent hired youths who moved to the suit property and evicted its security guards from the suit property. The 5th respondent is now operating a car bazaar and other related business on the same.
2. The applicant reported the 5th Respondent's actions to Muthangari police station in 2014. Later in or around May 2016, the applicant discovered that the 5th respondent had two certificates of titles which are alleged to have resulted from the sub divisions of the property. Due to constant harassment by the respondent, the applicant's official went to Muthangari Police Station where he recorded a statement. Further investigations revealed that the 5th respondent had obtained a transfer of the suit property from a fraudulent company purporting to be the applicant. The 5th respondent then proceeded to fraudulently obtain approval to subdivide the suit property. While this suit was pending, the 5th respondent misled the court into granting an order of maintenance of *status quo* which order has since been vacated on the court's own motion.
3. The officer who is purported to have sanctioned the transfer from the fake company purporting to be the applicant has since recorded a statement with the criminal investigations directorate denouncing any such endorsement. The lands officers have confirmed that the suit property is still registered in the applicant's name which has secured over one billion shillings using it as security. The applicant therefore contends that if the 5th respondent is not enjoined and the orders sought granted, it will suffer irreparable loss in case the 5th respondent decides to dispose of the suit property to third parties.
4. The 5th respondent has opposed the applicant's application based on a replying affidavit sworn on 16th October 2018. The 5th Respondent contends that it is the registered owner of the suit property. It acquired titled to the same in 2009 after which it subdivided the same into two parcels. The 5th respondent further states that it has been in possession of the suit property and even obtained permission to clear bushes in it from the relevant authorities. The 5th respondent states that the applicant has never been in possession of the suit property and that therefore there is no way injunctive orders can be granted in the terms prayed for. The 5th respondent also contends that the applicant had filed a similar application which has never been withdrawn.
5. I have considered the applicant's application as well as the opposition to the same by the 5th respondent. I have also considered the submissions by the applicant and the 5th respondent. The only issue for determination is whether an injunction can be granted in terms prayed for in the application. The purpose of an injunction is to preserve the subject matter of the suit until the dispute in issue is determined. In the instant case, the applicant and the 5th respondent are claiming that they have title to the suit property.
6. A look at the documents presented by the applicant shows that it is the registered owner of the suit property. The applicant has charged the suit property to two banks and obtained a loan of over one billion shillings. Though the 5th respondent claims that it has two titles in respect of the suit property after subdividing it, documents availed by the applicant in the supplementary affidavit show that the origin of the title which the 5th respondent has was through a transfer from a company bearing same name as the applicant's name.
7. The lands officer who is said to have acted on the transfer to the 5th respondent has recorded a statement denouncing her alleged involvement. The 5th respondent entered into the suit property after ejecting the security guards of the applicant. The 5th respondent misled

the court into granting an order of maintenance of status quo. That order has since been discharged at the court's own motion. This is a clear case where the applicant has demonstrated that it has a prima facie case with strong chances of success.

8. The 5th respondent entered into the suit property by deliberate design. Prima facie, the title held by the 5th respondent is doubtful in view of the confirmation from lands officials that there have been two attempts to have the records regarding the suit property changed from its owner. One such attempt is by the 5th respondent whose title is traced to a fake company purporting to bear a similar name as the applicant. The other attempt is from a person who filed a case for adverse possession against the original owner of the suit property unaware that the suit property had changed hands and as at the time he filed the frivolous claim, the suit property was already in the applicant's name.

9. I am aware that the effect of granting the orders prayed for by the applicant will lead to the eviction of the 5th respondent from the suit property. Without going into details of this case, it is clear from the documents availed that the applicant has a strong case. It is also clear as I have said before that the 5th respondent entered into the suit property by design. This position cannot be allowed to stand. It is a trespasser who ought to give way and it is no answer that the trespasser is capable of compensating the applicant at the conclusion of the case. There is a real danger that the 5th respondent might sell the suit property to innocent third parties. I find that this is a clear case where the applicant's application must succeed to preserve the suit property. I therefore allow the application by the applicant in the following terms.

1. Pending the hearing and determination of this suit, an injunction is hereby granted restraining the 5th respondent either by itself, its agents, servants, assigns or any other person from entering, encroaching, trespassing, working, developing, constructing, selling or disposing the suit property.

2. The status quo prevailing before the invasion by the 5th respondent should be maintained by allowing the applicant to remain in possession as was before.

3. The officer commanding Muthangari Police Station is directed to ensure compliance with the court orders.

4. The costs of this application shall be paid to the applicant by the 5th respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 31st day of January 2019.

E.O.OBAGA

JUDGE

In the presence of:-

Mr Maruja for Mr Ngoloma for Plaintiff

Mr Omari for Mr Ndegwa for 5th Defendant

Court Assistant: Hilda

E.O.OBAGA

JUDGE