



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 280 OF 2017

LAKEVIEW INVESTMENTS LIMITED.....PLAINTIFF/APPLICANT

VERSUS

PROF. JOHN PAUL ODERO (*sued as the Chairman*,SECONDARY

SCHOOLS HEADS ASSOCIATION).....DEFENDANT/RESPONDENT

RULING

1. In the Amended Notice of Motion dated 13th November, 2017, the Plaintiff is seeking for the following orders:

a. That this Honourable Court be pleased to grant a temporary injunction restraining the Defendants/Respondents by themselves, their members, their agents, servants and/or any other person or persons authorized by themselves from entering, trespassing, interfering, wasting, developing, alienating and/or in any other manner dealing adversely with the Plaintiff's/Applicant's parcels of land known as numbers L.R. No. Machakos/Mavoko/20154, Machakos/Mavoko/20155, Machakos/Mavoko/20156Machakos/Mavoko/20157,Machakos/Mavoko/20158, Machakos/Mavoko/20159, Machakos/Mavoko/20160, Machakos/Mavoko/20161, Machakos/Mavoko/20162 and Machakos/Mavoko/20163 pending the hearing and determination of this suit.

b. That the OCS Athi River Police Station to ensure compliance of the orders issued herein.

c. That the cost of this Application be provided for.

2. The Application is supported by the Affidavit of the Plaintiff's Managing Director who has deponed that on 11th July, 2017, the Defendant hired armed youths who invaded the suit land and destroyed several dwelling structures; that the Defendant does not have a Defence to the Plaintiff's claim and that the Application should be allowed.

3. In his response, the Defendant deponed that the Association is the legal owner of parcel of land known as L.R. No. 24561 (*I.R 193256*) situate in Machakos County; that they were allocated the suit land by the Commissioner of Lands vide a letter of allotment dated 24th September, 1993 and that after accepting the conditions in the said letter of allotment, they were issued with a Certificate of Title.

4. When they came across the Plaintiff's Deed Plan, the Defendant deponed that he consulted the Director of Survey vide a letter dated 24th July, 2017; that the Director of Surveys informed him that the Plaintiff's purported Deed Plans were forgeries and that the Plaintiff's claim is therefore fraudulent.

5. The Plaintiff's advocate submitted that the Plaintiff purchased the suit land from Jennifer Ndege Waithera; that the Plaintiff sub-divided the land into 93 sub-plots measuring 50feet by 100feet for the purpose of selling them to third parties and that since purchasing the said land, the Plaintiff has had peaceful possession until the year 2017.

6. The Plaintiff's counsel submitted that the Plaintiff has sold some of the sub-plots to third parties who have since developed them; that the Defendant has not exhibited any documents giving him capacity to swear the Replying Affidavit on behalf of the members of Nairobi Kenya Secondary Schools Heads Association and that the Title Deed that the Defendant is relying on was issued to the Defendant long after this suit had been filed.

7. On the other hand, the Defendant's advocate submitted that there are two competing interests in respect to the suit land; that the Defendant's Title Deed is first in time having been issued on 13th December, 2017 and that the Defendant was allocated the suit land way back in 1993.

8. Counsel submitted that other than the copies of the Deed Plans, the Plaintiff has not exhibited any title documents; that there is no

evidence to show that the Plaintiff has ever paid land rent and rates and that the Plaintiff has not established a prima facie case with chances of success.

9. The Plaintiff's case is that it purchased L.R. No. 20154-20163 from one Jennifer N. Waithera vide an Agreement dated 23rd October, 2008 which it has exhibited. The Plaintiff also exhibited the Deed Plans for the parcels of land it purportedly purchased from the said Jennifer N. Waithera. All the Deed Plans are dated 14th May, 1999. It is the Plaintiff's case that it sold the parcels of land to third parties who have since taken possession of the same.

10. On the other hand, the Defendant annexed on his Affidavit a letter of allotment dated 24th September, 1993 showing that "*Nairobi Teachers Association*" was allocated unsurveyed residential plot measuring approximately 10 Ha (25 acres). The officials of the said Association accepted the offer by paying the requisite stand premium vide a banker's cheque dated 24th September, 1993.

11. The Defendant also produced in evidence a copy of an indent dated 30th July, 1999, which showed how the land they were allocated was surveyed. The indent shows that the land they were allocated was surveyed vide F/R Nos. 360/6, 346/198, 346/199, 285/12 and 285/13. One of the parcels of land that was surveyed is L.R. No. 24561 whose Deed Plan was issued on 15th September, 2017 way after this suit had been filed. The Defendant's Association, Nairobi Secondary Schools Teachers (1992) Housing Project, was then issued with a Certificate of Title for land measuring 5.435 Ha on 13th December, 2017.

12. The Defendant produced in evidence a letter dated 24th July, 2017 in which the Director of Surveys stated that the Deed Plans being held by the Plaintiff were not issued by his office.

13. It is obvious that from the documentation before me, I cannot ascertain who between the Plaintiff and the Defendant has genuine documents(s) in respect to the suit land. Indeed, although the Plaintiff claims that it purchased the suit land from one Jennifer N. Waithera, it did not annex any document showing how the said Jennifer came to own the suit land. The Plaintiff did not also produce any indent to show that the survey and sub-division of the suit land was authorized by the Director of Surveyors.

14. On the other hand, the inconsistency of the name of the Defendant's Association will have to be explained. Furthermore, the Defendant will have to show at trial that by the time the land measuring 10 Ha was allocated to the Association in 1993, the same was available for alienation.

15. In a nutshell, neither the Plaintiff nor the Defendant have shown a prima facie case with chances of success. However, it is the Plaintiff and other third parties who are in possession of the suit land. To forestall any further dealings in the suit land, an order of *status quo* pending the hearing and determination of the suit should issue.

16. For the reasons I have given above, I make the following orders:

a. The prevailing status quo in respect of L.R. No. 24561 and/or L.R. Nos. 20154-20163 to be maintained pending the hearing and determination of the suit, meaning that neither the Plaintiff nor the Defendant or their agents, servants, employees and or people acting under them should alienate, transfer or charge the above mentioned parcels of land or put up any further developments on the suit land.

b. Each party to bear his or its own costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 25TH DAY OF JANUARY, 2019.

O.A. ANGOTE

JUDGE