



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELC SUIT NO. 413 OF 2013

JOHN KAMAU MWANGI.....PLAINTIFF

VERSUS

KENCAIR HOLDINGS LIMITED.....1ST DEFENDANT

COMMISSIONER OF LANDS.....2ND DEFENDANT

RULING

The plaintiff brought this suit against the defendants on 26th March, 2013 seeking a permanent injunction to restrain the 1st defendant from encroaching, alienating, interfering with, harassing or intimidating the tenants on or demolishing permanent buildings on all that parcel of land known as L.R No. Thika Municipality/Block 15/866. The plaintiff also sought an order directing the 2nd defendant to cancel the certificate of lease in respect of the said parcel of land which he claimed had been issued to the 1st defendant fraudulently.

The plaintiff averred that he had been in occupation of a parcel of land known as Reference No. 9290/XIV/81, PDP No. KBV/91/14 under a temporary occupation licence since the year 1991 and had let out the same to tenants while awaiting the issuance of a long lease by the 2nd defendant. The plaintiff averred that while he was waiting for a lease as aforesaid, the said parcel of land was surveyed, given land reference number Thika Municipality/Block 15/866 and allocated fraudulently by the 2nd defendant to the 1st defendant.

Together with the plaint, the plaintiff filed a Chamber Summons application dated 26th March, 2013 seeking a temporary injunction to restrain the 1st defendant from encroaching, alienating, interfering with the tenants on or demolishing permanent buildings on all that parcel of land known L.R No. Thika Municipality/Block 15/866 (formerly known as unsurveyed Plot No. 9290/XIV/81, PDP No. KBU/4/91/14) (hereinafter referred to only as “the suit property”) pending the hearing and determination of the suit. The defendants were served with the summons to enter appearance together with the said application. The 1st defendant appointed the firm of Kilonzo and Company Advocates to act for it in the matter while the 2nd defendant was represented by the Attorney General.

The plaintiff’s application came up for hearing under certificate of urgency ex parte on 27th March, 2013 when the court granted an interim order of injunction restraining the 1st defendant from interfering with the plaintiff’s occupation of the suit property pending the hearing of the application inter partes on 17th April, 2013. When the application came up for hearing on 17th April, 2013, the 1st defendant’s advocate asked for time to respond to the application which was granted. The application was stood over to 20th May, 2013 for further directions. The court made a further order that the status quo be maintained which the court explained to mean that the defendant was not to interfere with the plaintiff’s occupation of the suit property until further orders by the court.

When the matter came up again for mention on 20th May, 2013, the 1st defendant once again asked for more time to respond to the plaintiff’s application for injunction. The 1st defendant’s request was once again allowed by the court. The court fixed the matter for further mention on 25th June, 2013 and ordered that the status quo be maintained in terms of the orders that were given by the court on 17th April, 2013. The said orders of status quo were extended on 25th June, 2013 and on 20th September, 2013 when the court ordered as follows:

“.....the status quo as ordered on 17th April, 2013 shall obtain, and in addition none of the parties herein shall undertake any dealings involving the parcel of land known as Thika Municipality Block 15/866 until further order of the court.”

What is now before me is the plaintiff’s Notice of Motion application dated 31st October, 2014 in which the plaintiff has sought an order that the 1st defendant Kencair Holdings Ltd. and/or Nyokabi Kamotho being a director, an officer and/or a representative of the 1st defendant be arrested and detained in prison for a term not exceeding six months and/or be fined appropriately for disobedience of the court orders made herein by consent on 17th April, 2013 and confirmed on 20th September, 2013.

The plaintiff's application was brought on the grounds that while the order of status quo made on 17th April, 2013 which barred the 1st defendant from alienating and/or dealing with the suit property was in force, the 1st defendant went ahead in contempt of the said order and sold the suit property to a company known as Contour Estates Limited. The plaintiff averred that the said Contour Estates Limited which was not aware of the said court order had filed a suit against the 1st defendant for specific performance of the agreement for sale between them in respect of the suit property namely, Nairobi ELC No. 1276 of 2013. The plaintiff averred that following the purported sale of the suit property by the 1st defendant to the said Contour Estates Ltd., the 1st defendant and/or Contour Estates Limited had attempted to enter the suit property to evict the plaintiff and other occupants thereof and had also marked the buildings standing thereon for demolition. The plaintiff averred that the sale of the suit property by the 1st defendant during the subsistence of the said court order amounted to contempt of court and abuse of the court process. The plaintiff contended that court orders are sacrosanct and must be obeyed by all more particularly by the officers of the court like the alleged contemnor who is an advocate of the High Court.

The plaintiff's application was opposed by the alleged contemnors through a replying affidavit sworn by Nyokabi Kamotho on 14th July, 2017. The alleged contemnors termed the plaintiff's application as an abuse of the process of the court. They averred that by the time the plaintiff brought this suit in 2013, the 1st defendant was in the process of selling the suit property and had in fact received and accepted an offer from a prospective buyer. The alleged contemnors contended that the 1st defendant entered into an agreement for sale with Contour Estates Limited on 16th May, 2013 when there was no order in force preventing the 1st defendant from selling the suit property. The alleged contemnors contended that the 1st defendant did not breach any court order when it entered into the said agreement for sale with Contour Estates Ltd. The alleged contemnors averred that when the 1st defendant learnt of the orders that were issued by the court prohibiting the sale of the suit property, it halted the transaction which resulted in a suit being filed against the 1st defendant by the purchaser for specific performance. The alleged contemnors averred that the 1st defendant had not transferred the suit property to the purchaser and that the same was still in its name. The alleged contemnors averred further that the plaintiff was still in occupation of the suit property and had not been threatened with eviction as he had alleged.

The plaintiff's application was argued by way of written submissions. The plaintiff filed his submissions on 9th February, 2018 while the alleged contemnors filed their submissions on 16th March, 2018. I have considered the plaintiff's application together with the supporting affidavit. I have also considered the alleged contemnors' affidavit in opposition to the application. Finally, I have considered the submissions of counsel and the authorities cited in support thereof. What I need to determine in the application before the court is whether the alleged contemnors disobeyed the order of status quo that was made on 17th April, 2013 and confirmed on 20th September, 2013. On 17th April, 2013 the court made an order on the following terms:

“In the meantime, the status quo to be maintained shall be that the defendants shall not interfere with the plaintiff's occupation of the property known as Thika Municipality Block 15/866 until further order by the court (emphasis added).”

On the other hand the order made by the court on 20th September, 2013 was on the following terms:

“In the meantime, the status quo as ordered on 17th April, 2013, shall obtain, and in addition none of the parties herein shall undertake any dealings involving the parcel of land known as Thika Municipality Block 15/866 until further order of the court (emphasis added).”

It was not disputed that on 16th May, 2013, the 1st defendant entered into an agreement with a company known as Contour Estates Ltd. under which the 1st defendant sold the suit property to the said Contour Estates Ltd. at a consideration of Kshs.53,993,500/= on terms and conditions that were contained in the said agreement. It was also not disputed that the sale agreement between the 1st defendant and the said Contour Estates Ltd. was not completed and there was a case pending in court over the same. The plaintiff contended that the sale of the suit property by the 1st defendant to the said Contour Estates Ltd. was barred by the order for status quo that was made by the court on 17th April, 2013.

I have reproduced above the order that was made by the court on 17th April, 2013. There is no doubt upon reading the said order that it did not restrain the sale of the suit property. The order is clear that the status quo that was to be maintained was with regard to the plaintiff's occupation of the suit property. It was not until 20th September, 2013 that the court ordered that there shall be no dealings with the suit property pending further orders by the court. This order was in addition to the order of status quo that had been made on 17th April, 2013. This in my view is the order that stopped the sale or any other dealings with the suit property. The plaintiff did not place any evidence before the court showing that after the order of 20th September, 2013, the 1st defendant sold or transferred the suit property to a third party. No evidence was also placed before the court showing that after the order made on 17th April, 2013, the 1st defendant evicted the plaintiff from the suit property. The plaintiff did not controvert the statement in the replying affidavit of Nyokabi Kamotho that the suit property was still in the name of the 1st defendant and that the plaintiff was in occupation of the property as at the time he brought the present application.

Due to the foregoing, it is my finding that the plaintiff has not proved the acts of contempt alleged against the 1st defendant. The Notice of Motion dated 31st October, 2014 therefore lacks merit. The same is dismissed with costs to the 1st defendant.

Delivered and Dated at Nairobi this 14th day of February 2019

S. OKONG'O

JUDGE

Ruling read in open court in the presence of:

N/A for the Plaintiff

Mr. Mapesa h/b for Ms. Makobu for the 1st Defendant

N/A for the 2nd Defendant

Mr. Waweru-Court Assistant