



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT MILIMANI

ELC PETITION NO. 63 OF 2018

MOHAMMED KASIM MOHAMUD.....1ST PETITIONER

DURAN HUSSEIN MADOBÉ.....2ND PETITIONER

=VERSUS=

THE NATIONAL LAND COMMISSION.....1ST RESPONDENT

THE CHIEF LAND REGISTRAR.....2ND RESPONDENT

ESTATE OF THE LATE MWATHI KITHEKA...3RD RESPONDENT

JANE WAMBUI KARWENJU.....4TH RESPONDENT

RULING

1. The Petitioners/Applicants filed a Notice of Motion dated 24th October, 2018 in which they seek the following orders:-

1. Spent

2. Spent

3. spent

4. spent

5. Pending the hearing and determination of this Petition this Honourable Court be pleased to issue a Conservatory Order staying the 1st Respondent's directive in Table 1 of the Kenya Gazette Notice No. 6862 dated 17th day of July, 2017 upholding the indenture held by Mwathi Kitheka and directing the 2nd Respondent to revoke the indenture held by the Petitioners in respect to the land registered as L.R No. 36/VII/436 Nairobi.

6. Pending the hearing and determination of this petition this Honourable Court be pleased to issue a Conservatory Order restraining the 2nd Respondent or any other Registrar and/or employee, agent, assign of the 2nd Respondent or any other person whomsoever from revoking the indenture held by the Petitioners, cancelling, entering any restriction or dealing adversely in any way whatsoever with the said indenture held by the Petitioners over the land registered as L.R No. 36/VII/436 Nairobi.

7. Pending the hearing and determination of this Petition this Honourable Court be pleased to issue an Injunction restraining the 3rd and 4th Respondents or their representatives, agents, principals, employees, servants, assigns or any other person whomsoever from interfering with, harassing, intimidating threatening or evicting the Petitioners, including the Petitioners' tenants, agents, servants or any other such person whomsoever, from the suit property registered as L.R No. 36/VII/436 Nairobi or in any other manner whatsoever dealing with the said suit property registered as L.R No. 36/VII/436 Nairobi.

8. The Petitioners be at liberty to apply to the Honourable Court for such further directions and orders for purposes of meeting the ends of justice.

9. Costs of the application to be provided for.

2. The Applicants are the registered owners of LR No. 36/VII/436 at Eastleigh in Nairobi (suit property). The Applicants purchased the suit property from one Ndirangu Karanja on 23rd February, 2009 at a consideration of Kshs.17,500,000/=.

3. Prior to the purchase of the suit property by the Applicants, the suit property had been a subject of litigation which started in 1999. The suit property was originally owned by Mwathi Kitheka who has since died (deceased). The deceased had contracted one John Njuguna Nduati to sell the suit property at Kshs.5000,000/= in 1994. It was alleged that the said John Njuguna Nduati had transferred the suit property into his name without payment of the full purchase price. The said John Njuguna Nduati then transferred the suit property to Karanja Ndirangu.

4. Before the death of the deceased, she had donated a power of attorney to Peter Chania Magere who started the 1999 litigation. At some stage of the litigation, the property was transferred from Ndirangu Karanja to Peter Chania Magere. This position however changed on 25th October, 2006 when the High Court revoked the registration of Peter Chania Magere and the property reverted back to Ndirangu Karanja.

5. Peter Chania Magere lost interest in the suit. The Defendants in the case applied for its dismissal. In a ruling delivered on 8th December, 2010, the suit by Peter Chania Magere was dismissed. On 25th November, 2015, the 4th Respondent herein applied to have the orders of 8th December, 2010 set aside. The 4th Respondent made the application based on a power of attorney donated to her by Peter Chania Magere. This application was dismissed in a ruling delivered on 13th March, 2017. This being the case, the position which remained is that of 25th October, 2006 which reverted the title to the suit property to Ndirangu Karanja.

6. The Applicants contend that they are innocent purchasers for value without notice of any defect in the title. They state that they have since put up a seven storey building on the suit property comprising of 35 apartments which have been sold and leased out to third parties. The Applicants argue that despite the 3rd and 4th Respondent being aware that the pending litigation had been settled by Court, they again want to make a complaint to the National Land Commission (1st Respondent) which without jurisdiction proceeded to order revocation of the indenture of conveyance which they have and directed the 2nd Respondent to effect the revocation.

7. The Applicants contend that if the conservatory orders are not granted, they are bound to suffer loss. The Applicants further contend that the 1st Respondent's action was done in complete disregard of the Court decision, in the litigation which was touching on the suit property.

8. The 1st Respondent opposed the Applicants application through grounds of opposition filed in Court on 16th January, 2019. The 1st Respondent contends that there is no decision made by the 1st Respondent capable of being challenged by this petition; that the jurisdiction of this Court has not been properly invoked; that the Applicants should have preferred an appeal to the Environment and Land Court and that this application is an abuse of the process of the Court.

9. The Applicants application is opposed by the 3rd and 4th Respondents through a Replying Affidavit sworn on 18th December, 2018. The 3rd and 4th Respondents have basically given the history of the litigation touching on the suit property which is now settled as stated in the preceding paragraphs. The 3rd and 4th Respondents contend that had the Applicants done due diligence, they would have realized that there was no original title to the suit property and that they cannot therefore claim to be innocent purchasers for value without notice.

10. I have carefully considered the Applicants application as well as the opposition to the same by the 1st, 3rd and 4th Respondents. I have also considered the submissions by the Applicants and the 3rd and 4th Respondents. The only issue for determination herein is whether the Applicants have met the threshold for grant of conservatory orders. There is no doubt that the suit property is registered in the names of the Applicants. There is also no doubt that the Applicants have put up a seven storey building on the suit property. The 1st Respondent has through Gazette Notice dated 17th July, 2017 recommended that title held by the Applicants be revoked on grounds that they obtained the title illegally.

11. The Applicants have demonstrated that they purchased the suit property from Ndirangu Karanja in whom the Court had vested title through a Court order. This position was never reversed. The suit which was pending touching on the acquisition of the said title by Ndirangu Karanja was dismissed on 8th December, 2010. Attempts to have the dismissal order set aside were not successful.

12. The directive by the 1st Respondent was arrived at without considering the fact that there were proceedings before Court which had been completed. There is on the property a seven storey building. If title were to be revoked by the 2nd Respondent, there will be serious consequences to the Applicants who have massively invested in the same. This Court has jurisdiction to entertain the petition. I find that the Applicants have demonstrated that they have a prima facie which warrants this Court to grant conservatory orders. I therefore find that the Applicants application has merits. I allow the same in terms of prayers 5, 6, 7 and 9.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 25th day of April, 2019.

E.O.OBAGA

JUDGE

In the presence of Mr. Nyakundi for Mr. Munyua for 3rd and 4th Respondent.

Court Assistant - Hilda

E.O.OBAGA

JUDGE

25.4.2019