



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 9 OF 2019

AFRICA BLOOMS LIMITED.....APPLICANT

VERSUS

SAMUEL KARUGA.....RESPONDENT

RULING

(Application for injunction; principles to be applied; applicant having title to the suit land and seeking to restrain the respondent from it; respondent having a decree for 10 acres of the suit land against the person who sold the land to the applicant and moving to execute for it; issuing injunction would be akin to stopping the respondent from executing his judgment; application for injunction dismissed)

1. This suit was commenced through a plaint which was filed on 31 January 2019. Simultaneously with the plaint, the plaintiff filed an application seeking orders of injunction directed at the defendant, pending the hearing and determination of this suit. It is that application which is the subject of this ruling.

2. The case of the applicant, as contained in the plaint and the affidavits in support of the application, is that the applicant is the owner and registered proprietor of the land parcel LR No. 9770/11 (original number 9770/6/2) which is land measuring about 39.85 Ha. It purchased this land in the year 2010, from I & M Bank. It appears to me that I & M Bank held a charge over the land parcel LR No. 9770/6 which was in name of Sarkish Flora Limited, and this land was subdivided, so that part of it, which is the suit land, was sold to the applicant. The entire business of Sarkish Flora Limited was then taken over by the applicant, and the applicant has charged the land, and created a debenture, in favour of Standard Chartered Limited, to secure some financial facilities. It is averred that on 25 January 2019, the respondent, accompanied by police officers and surveyors, descended on the suit land and started placing beacons on it. It is this action which prompted the applicant to come to court.

3. The respondent has filed defence and replied to the subject application. His position is that 10 acres out of the land parcel LR No. 9770/11 has been decreed as belonging to him through the case Nakuru HCCC No. 11 of 2004. He has mentioned that at the time the land was being acquired by the applicant, there was the pending case Nakuru HCCC No. 11 of 2004 over the ownership of LR No. 9770/6. The respondent avers that this 10 acres has not been utilized by the applicant. He has faulted the applicant for not carrying out any due diligence when purchasing the suit land. He has also filed a counterclaim seeking 10 acres out of the suit land and identified the same as the portion fronting the highway. In his replying affidavit, he deposed that he was the original owner of LR No. 9770/6. He then sold 90 acres of this land to Sarkish Flora Limited for Kshs. 7,200,000/= and remained with 10 acres. They had a written agreement where the whole land was to be transferred to Sarkish Flora Limited, who would in turn subdivide the land, and transfer 10 acres fronting the highway to him. He has further averred that he was to be paid Kshs. 1.5 Million upon Sarkish Flora Limited commencing their flower growing business, and the balance was to be converted into shares in the flower business. He has deposed that he was neither paid the Kshs. 1.5 Million nor was he given any shares. The dispute went to court which is the said Nakuru HCCC No. 11 of 2004. He has annexed to his replying affidavit, a sale agreement between himself and Sarkish Flora Limited, judgment in the suit Nakuru HCCC No. 11 of 2004, the decree, and an order dated 25 June 2018. He has averred that he was simply executing the court order and decree when he entered the suit land. It is his view that Sarkish Flora Limited had no good title to the 10 acres fronting the highway and could pass no good title to the applicant for this portion of the suit land.

4. The application before me is one of injunction, and the court is guided by the principles laid down in the case of ***Giella vs Cassman Brown (1973) EA 358***. One needs to demonstrate a prima facie case with a probability of success and also show that he stands to suffer irreparable loss if the injunction is not granted. Where the court is in doubt, it will decide the matter on a balance of convenience.

5. After assessing the case of both the applicant and the respondent, I do note that both parties claim to have good title to the suit land. The applicant of course avers that it properly purchased the suit land whereas the respondent claims to be entitled to 10 acres of it through the judgment of the court. My own view of the matter, at least at this interlocutory stage of the case, is that the court judgment in Nakuru HCCC No. 11 of 2004, needs to be given prominence. However, that judgment is yet to be formally executed, in that the 10 acres are yet to be excised from the suit land, and a separate title is yet to be issued to the respondent. The respondent has explained that he has made entry into

the suit land so as to formally excise his 10 acres as decreed in the judgment. I am unable to fault the respondent for doing so because he already has a judgment in his favour and he cannot execute it unless he enters the suit land and identifies the 10 acres decreed to be belonging to him.

6. Given the above, I am not persuaded that the applicant has made out a prima facie case against the respondent, at least in so far as the 10 acres next to the highway is concerned. Indeed, if I issue the order of injunction, I will be impeding the respondent from executing the judgment given in his favour in Nakuru HCCC No. 11 of 2004.

7. It is in view of the above that I do not find merit in the application for injunction and it is hereby dismissed with costs to the respondent.

8. Orders accordingly.

Dated, signed and delivered in open court at Nakuru 23RD day of July 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :-

Mr. Nyamweya for the plaintiff/applicant.

No appearance on the part of M/s Nancy Njoroge & Co. Advocates for the respondent.

Court Assistants: Nelima Janepher /Patrick Kemboi.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU