

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 247 OF 2016

PAUL KAMAU WAWERU.....PLAINTIFF

VERSUS

GEOFFREY NDUNG’U THEURI.....1ST DEFENDANT

THE CHIEF LAND REGISTRAR2ND DEFENDANT

RULING

Through the plaint dated 10/03/2016, the Plaintiff seeks a permanent injunction to restrain the 2nd Defendant or its servants, agents, employees, nominees or any other person claiming under him from processing or issuing a title over land reference number 27322, Kasarani, Nairobi (“the Suit Property”) as well as the costs of the suit. The 1st Defendant filed a defence and counterclaim dated 27/04/2016 while the 2nd Defendant filed the defence dated 06/12/2017.

The 1st Defendant brought the application dated 27/04/2016 seeking to strike out the Plaintiff’s suit on the ground that the 1st Defendant is the rightful and legal owner of the Suit Property, which he claims was allocated to him by the Commissioner of Lands. The 1st Defendant also argued that the Plaintiff’s suit was premature as the Plaintiff had not complied with his contractual obligations under the sale agreement dated 06/03/2015 and the addendum dated 3/10/2016 entered into between the 1st Defendant and the Plaintiff. The 1st Defendant claims that he sold the Plaintiff half a portion of the Suit Property which was to be transferred by the 1st Defendant upon completion of the sale transaction, after the Plaintiff had paid the 1st Defendant the balance of Kshs. 20,000,000/=. The 1st Defendant also urged that this suit and the application are based on the false premise that the 1st Defendant intends to defraud the Plaintiff by selling his whole parcel of land.

The application was supported by the 1st Defendant’s affidavit sworn on 27/04/2016 in which he deponed that he had allowed the Plaintiff possession of his portion of the suit land, on which the Plaintiff erected a four storey commercial building. He also deponed that he is still committed to completing his part of the deal with the Plaintiff, and that as soon as he gets the original title over the suit land, he will embark on the process of subdividing the land into two equal parts and procure separate titles, one for the Plaintiff and one for himself.

The Plaintiff did not file a response to the application. On 22/7/2019 when this matter came up, counsel for the Plaintiff informed the court that the Plaintiff had failed to give his advocate instructions. The 2nd Defendant did not participate in this application.

The court has considered the application as well as the submissions by the 1st Defendant. The court notes that parties sought time to settle this matter out of court but it would seem that those negotiations were not fruitful.

The court is not persuaded that this suit is suitable for striking out, as there are issues raised in the dispute which require determination at the trial when each party can present its case so that a final resolution of the dispute can be reached.

The 1st Defendant’s application dated 27/04/2016 is dismissed with no orders as to costs.

Dated and delivered at Nairobi this 8th day of August 2019

K.BOR

JUDGE

In the presence of: -

C.K. Chege for the Plaintiff

B. Situma holding brief for D. Mbigi for the 1st Defendant

Mr. V. Owuor- Court Assistant

No appearance for the 2nd Defendant