



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI**

**ELC NO. 434 OF 2017**

**NAIROBI HOUSE LIMITED.....PLAINTIFF/APPLICANT**

**- VERUS-**

**LENAH CATHERINE KOINANGE.....DEFENDANT/RESPONDENT**

**RULING**

1. This is a ruling in respect of a Notice of Motion dated 28<sup>th</sup> June 2017. The application which is brought by the Plaintiff/Applicant seeks the following orders:-

**1. Spent**

**2. Spent**

**3. That pending the hearing and determination of this suit, the Defendant/Respondent whether by herself, employees, servants, agents or any other person(s) whomsoever and howsoever acting in connection with and/or under the instructions be and is hereby restrained by an order of this Honourable Court from excavating, carrying out any construction works, building any structures, carrying out any subdivisions, trespassing, encroaching, alienating, interfering with and/or dealing in any manner whatsoever and howsoever with the Plaintiff/Applicant's parcel of land known as LR No. 6863/75 ( I.R No.31722) situated in Lavington Nairobi.**

**4. Spent**

**5. That pending the hearing and determination of this suit, the Defendant/Respondent whether by herself, employees, servants, agents or any other person(s) whomsoever and howsoever acting in connection with and/or under the instructions be and is hereby restrained by an order of this Honourable Court from masquerading and/or presenting herself to the general public as the owner of all that parcel of land known as LR No. 6863/75 (I.R No.31722) situated in Lavington Nairobi.**

**6. That the OCS Muthangari Police station be and is hereby directed by an order of this Honourable Court to ensure the safety of and provide security to the court bailiffs executing any orders issued by this Honourable Court.**

**7. That the Inspector General of Police be and is hereby ordered by this Honourable Court to ensure compliance of any orders issued herein.**

**8. That the Honourable Court do issue any such other and /or further orders as it may deem fit and just and in the interests of justice, in the circumstance of this case.**

**9. That the Costs of this Application be provided for.**

2. The dispute herein relates to a property which is in Lavington area of Nairobi. The Applicant claims that it is the registered owner of the property which is LR No.6863/75 (IR No.31722) measuring 3.14 hectares which translates to about 7.774 acres. On the other hand, the Respondent claims that she is the registered owner of the same property which is LR No. 209/7577, IR 94498 ( now 157842) measuring 1.964 hectares which translates to about 4.853 acres. For convenience I shall refer to the two different titles as the suit property.

3. The Applicant contends that it is the registered owner of the suit property which originates from a grant issued to it for a term of 999 years with effect from 25<sup>th</sup> January 1910. The Applicant states that it has been paying land rent to the Ministry of Lands and rates to

Nairobi City Council and lately to Nairobi City County. The property is near Muthangari Police Station. Sometime in December 2016, the Respondent trespassed into the suit property where she started sub-dividing the same after which she carried out excavations and started construction works on it.

4. The Applicant argues that the Respondent had made similar attempts to lay claim to the suit property in 2005 through a company called Jewel Investments Ltd which attempts culminated in filing of a number of suits which were in one way or another concluded in its favour. The Respondent was charged in Kibera Chief Magistrates' Court Criminal case No. 7292 of 2005 but that the said case was never prosecuted for unknown reasons. The Applicant states that in one of the cases filed, that is Nairobi HCCC No.1531 of 2005, a consent was recorded which recognized the title held by it as the genuine one whereas the one held by the Respondent was declared to be a nullity.

5. The other suit being **NAIROBI HCCC NO.1184 OF 2005 TRENTON (K) LTD & ANOTHER VS NAIROBI HOUSE LTD & 2 OTHERS** was struck out at the behest of an application filed by the Applicant. The Respondent's attempt to stop her prosecution in the Chief Magistrates Court at Kibera through a constitutional petition was dismissed on 23<sup>rd</sup> February 2007. In **Nairobi HCCC No. 1094 of 2005 ( Nairobi House Ltd Vs Lennah Koinange & Others)**, a consent was recorded whereby Trenton (k) Ltd which was one of the Defendants acknowledged that the title it had was a forgery and that it had no claim whatsoever over the suit property. The suit was later withdrawn by the Applicant as the majority shareholder had acknowledged that the title held by it was a forgery.

6. The Applicant contends that the Respondents invaded the suit property with the assistance of thugs and that it has since made numerous complaints to various government agencies without any assistance. The Applicant argues that despite Nairobi City County stating that the ongoing constructions on the suit property did not have their approval, there is nothing which has been done to stop the Respondent from carrying on.

7. The Applicant further argues that the National Land Commission (NLC) has recognized its title and that it has used the title to secure a facility of **Kshs.850,000,000/=** from Diamond Trust Bank(k) Limited. The Applicant therefore argues that it has justifiable fears that the activities of the Respondent are devaluing the suit property and that the Respondent might sell the suit property to unsuspecting members of the public. It is on this basis that the Applicant seeks the orders herein.

8. The Respondent opposed the Applicant's application through a replying affidavit sworn on 14<sup>th</sup> July 2017. The Respondent contends that she is the registered owner of the suit property which has its origin to an allocation given to his father Hon. Mbiyu Koinange in or around 1975 in compensation for a portion which he had surrendered to the government for construction of government offices and police station at Banana Hills, in Kiambu.

9. The Respondent's father had not processed title as at the time he passed on. The Respondent using the original allotment letter and deed plan tried to pursue registration of the suit property in his father's name but she was told that it was not possible. She had to apply to be allocated the land which was done on 10<sup>th</sup> September 1991. She paid the requisite amounts after which title was processed.

10. In 2005, she applied for approvals from Nairobi City Council to put up a perimeter fence which approval was granted. She argues that she has since subdivided the suit property into LR Nos 209/21308,21309 and 21310. She states that in 2005, some strangers tried to evict her but when she informed them that she was the owner, they went away never to come back. The Applicant contends that save for **Nairobi HCCC 1094 of 2005 (Nairobi House Ltd Vs Lennah Koinange & 2 Others)**, she was never a party in all the others and was not made aware of them. She states that the Applicant herein withdrew its case against her in NBI HCCC No. 1094 of 2005 after which a consent was recorded which purported to recognize the title held by the Applicant.

11. The Respondent contends that the suits which had been filed touching on the suit property were either settled or withdrawn in a conspiratorial manner. She states that the criminal case file was destroyed after it was published in a Gazette Notice. The title held by the Applicant was investigated following a complaint by Nairobi County Government. This complaint led to filing of Misc case No.263 of 2015 at Kiambu where the CID sought to have the title held by Diamond Trust Bank (k) Ltd released for forensic examination. The Applicant tried to stop the process by filing judicial review Application No 320 of 2015. This application was however dismissed by Justice Odunga on 30<sup>th</sup> August 2016.

12. The Respondent contends that the land being claimed by the Applicant includes public roads and that she has made complaints to the Ministry of Land and NLC to investigate the issue but nothing seems to be happening. The Respondent denies ever selling her land to Trenton (k) Ltd or Jewel Investments Ltd. She states that she intended to sell the suit property to the two companies in 2005 but the sale did not go through. She denies all the allegations by the Applicant and states that no complaint has ever been made against her to the County Government of Nairobi. She prays that the Applicant's application be dismissed.

13. In a further affidavit sworn on 24<sup>th</sup> August 2017, the Applicant refutes all that the Respondent has deposed to and further argues that the investigations which were carried out prior to 2005 by the CID are now being watered down by new investigations which tend to cast doubts on the title held by the Applicant. The Applicant argues that the titles held by the Respondent are forgeries. The Applicant point out to the averments by the Respondent in NBI HCCC 1094 of 2005 which are to the effect that she had sold the suit property to Trenton (k) Ltd and Jewel Investments Ltd. The Applicant argues that these averments are contradictory to what the Respondent is now saying.

14. The Applicant denies that it has ever laid any claim to Kabasarian Avenue and Kabasarian Gardens which are public roads. The Applicant argues that the Respondent has tampered with records at Lands Office and survey office with a view to vindicating her title.

15. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions by the parties herein. The only issue herein for determination is whether the Applicant has demonstrated a prima facie case to warrant issuance of an injunction in the manner sought. A prima facie case was described in **Mrao Ltd Vs First American Bank of Kenya & 2 Others ( 2003) KLR 125** as follows:-

**“ In civil cases a prima facie case is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.**

16. In the instant case both the Applicant and the Respondent are laying claim to the suit property. Both titles have at different stages been subjected to investigations but what is clear is that in both cases no definite conclusion has been reached about the authenticity of either title. This being the case, it is not for this court to delve into details and examine the two titles as to say which one is the genuine one or not the genuine one. This is a matter best left for the main hearing. There is therefore no basis upon which this court can make a finding that the Applicant has established a prima facie case to warrant issuance of injunction.

17. The materials placed before me show that as early as 2005, there were litigations revolving around the suit property. The Respondent appears to have been in possession and is in possession to date. To grant the injunction in the manner sought would amount to evicting the Respondent. The purpose of an interlocutory injunction is to preserve the suit property and it is never meant to restrain what has already happened. In the circumstances of this case, I find that the application by the Applicant lacks merit. The same is hereby dismissed with costs to the Respondent.

It is so ordered.

Dated, Signed and Delivered at **Nairobi on 17<sup>th</sup>** this day of **October 2019**

**E.O .OBAGA**

**JUDGE**

In the Presence of:-

Mr Ouma for Defendant

Mr Kamau for 3<sup>rd</sup> Defendant in counter-claim

M/s Mwangi for Mr Nyachoti for Plaintiff

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**