



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO1622 of 2007

SALOME WANJIRU NGUGI.....APPLICANT

VERSUS

MUMBI WAKABA & ANOTHERRESPONDENT

RULING

1. The Applicant herein M/s Salome Wanjiru Ngugi filed a Notice of Motion dated 5th February 2019 in which she sought the following orders;-

i. Spent

ii. Spent

iii. Status quo in the form of the 1st Respondent , the proprietor of the suit property, her agents and/or representatives retaining and keeping title to the property without transfer, disposing of, charging, mortgaging or engaging in any form of dealings with a third party with respect to the property known as LR No.Ruiru/Mugutha Block 1/T 1499 be maintained pending the hearing and determination of the Appeal;

iv. The court be pleased to grant any other appropriate relief that it deems fit in the interest of fair administration of justice and the rule of law;-

v. The cost of this application be provided for.

2. The Applicant was the first Defendant in this case. She had been sued by the Respondent M/s Mumbi Wakaba. In a judgement delivered on 16th April 2018, the Court found that the title held by the Applicant was fraudulently obtained. An order for cancellation of the title was made and the court directed that the title be registered in the name of the Respondent. The title favour of the Applicant has since been cancelled and the same registered in the name of the Respondent.

3. The Applicant now contends that the Respondent is in the process of transferring the same to the third party and that if maintenance of status quo is not upheld, the Respondent might transfer the suit property to a third party which might complicate the matter because if the appeal which the Applicant has filed succeeds, the Applicant will have to file a suit against the third party for recovery of the land. The Applicant contends that already, the person to whom she had sold the suit property has threatened her with a suit to recover the purchase price which was paid to her.

4. The Respondent opposed the Applicant's application based on a replying affidavit sworn on 30th April 2019. The Respondent contends that as the registered owner of the suit property, she is at liberty to deal with it as she wishes and that she cannot be barred from doing so.

5. I have considered the application by the Applicant as well as the opposition to the same by the Respondent. I have also considered the oral submissions during the hearing of the application. The only issue for determination in this case is whether the Applicant has shown a case for maintenance of status quo.

As I have already said herein above, judgement was entered in favour of the Respondent on 16th April 2018. There was no application for stay made. The Respondent has already implemented the judgement by having the suit property transferred to her. As per the oral submissions during the hearing of this application, the Respondent has since transferred the property to her daughter. There is absolutely no need for this court to order that there should be maintenance of status quo. If the Applicant was keen on having the status quo maintained, the best way to have gone about it was to apply for stay of execution which unfortunately she did not do. The property is now in the hands of a

third party who cannot be ordered not to deal with it as she is the owner. I therefore find no merit in this application which is dismissed with costs to the Respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 7th day of November 2019.

E.O.OBAGA

JUDGE

In the presence of;-

M/s Sebastian for Mr Oduor for Applicant and

M/s Njagi for Mr Kimathi for 1st Respondent

Court Assistant: Hilda

E.O.OBAGA

JUDGE