



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 290 OF 2019

GREEN BELT WAREHOUSE LIMITED.....PLAINTIFF/APPLICANT

=VERSUS=

ABDULLAHI MOHAMMED SHEIKH..... DEFENDANT/RESPONDENT

RULING

1. Coming up are the two notice of motions dated 6th September 2019 and 26th September 2019.
2. The notice of motion dated 6th September 2019 is brought under order 40 rule 1, order 51 of the Civil Procedure Rules, Sections 3, 3A, Section 1A, 1B and 63 of the Civil Procedure Act No 19 of 2011 Laws of Kenya and all enabling provisions of the law.
3. It seeks the orders:-
 - (1) Spent.
 - (2) Spent.
 - (3) Spent
 - (4) *That the honourable court be pleased to grant a temporary injunction restraining the respondent whether by himself, his agents, and/or servants from trespassing on, wasting, alienating or otherwise interfering with the applicant's agents, tenants or servants peaceful and quiet enjoyment or dealing with the properties being LR Nos 209/7260/19388 and 209/7260/19389, Nairobi registered in the plaintiff's name pending the hearing and determination of this suit.*
 - (5) *That the OCS Buru Buru and Shauri Moyo police station to enforce compliance of the orders above.*
 - (6) *That the honourable court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.*
 - (7) *That the cost of this application be provided for.*
4. The grounds are on the face of the application and are set out in paragraphs 9 to 16.
5. The application is supported by the affidavit of Ibrahim Diriye Santur a director of the plaintiff/applicant sworn on the 6th September 2019 and a further affidavit sworn on 14th October 2019.
6. The application is opposed. There is a replying affidavit sworn by Addullahi Mohammed Sheikh the defendant herein sworn on the 4th October 2019.
7. The notice of motion dated 26th September 2019 is brought under Section 1A and 1B of the Civil Procedure Act and Article 159 of the Constitution of Kenya, 2010.
8. It seeks orders:-

1. Spent

2. Spent

3. Upon the hearing of this application the honourable court be pleased to set aside its orders of 17th September 2019.

4. The court be pleased to give directions for the interpartes hearing of the respondent's application of 10th September 2019.

5. Costs of the application be provided for.

9. The grounds are on the face of the application and are set out in paragraphs 1 to 18.

10. The application is supported by the affidavit of Abdullahi Mohamed Sheikh the defendant, sworn on the 26th September 2019.

11. On the 14th October 2019, the court directed that the two applications be heard together. On the 24th October 2019, the two applications proceeded by way of oral submissions.

12. It is the plaintiff/applicant's case that it is the registered owner of the suit property vide a transfer by chargee Gulf African Bank Ltd on the 30th January 2019. The copy of title is annexed. The certificates of official search also confirmed the plaintiff/applicant as the registered owner. Further that it has satisfied the conditions for grant of temporary injunction and the application ought to be allowed.

13. It is the defendant's/respondent's submissions that the orders issued on 17th September 2019 ought to be set aside as the plaintiff did not disclose material facts. That there are orders in HCCC 501/16 stopping the registration. He prays that the notice of motion dated 26th September 2019 be allowed.

14. I have considered the two applications, the affidavits in support and in reply, the oral submissions made on behalf of the parties and the authorities cited.

15. It is not in doubt that the plaintiff/applicant is the registered owner of the suit property through a transfer by charge Gulf African Bank Limited in 30th January 2019.

I have seen the orders issued by Honourable Lady Justice M. Odero in HCCC 501/2016. The same were issued on 1st July 2019. The same were issued after the chargee had transferred the suit property to the plaintiff/applicant. I also note that the plaintiff/applicant was not a party to the suit in the High Court, Commercial & Admiralty & Tax Division. It cannot be said to have failed to disclose material facts which it was not aware of.

16. Section 26 (1) of the LRA provides that:-

(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

The defendant/respondent has not demonstrated any wrong doing by the plaintiff/applicant as far as registration is concerned. If the defendant is aggrieved, then his claim ought to be against the chargee (Gulf African Bank Ltd).

17. The upshot of the matter is that I find no merit in the notice of motion dated 26th September 2019 and the same is dismissed. The costs do abide the outcome of the main suit.

18. Consequently, I find merit in the notice of motion dated 6th September 2019 and grant the orders sought namely:-

(a) That a temporary injunction be and is hereby issued restraining the defendant/respondent whether by himself, his agents, and/or servants from trespassing or wasting, alienating or otherwise interfering with the applicant's agents, tenants or servants peaceful and quiet enjoyment or dealing with the suit properties LR NOs 209/7260/19388 and 209/7260/19389; Nairobi pending the hearing and determination of this suit.

(b) That the OCS Buru Buru & Shauri Moyo Police station do enforce compliance of the orders above.

(c) That costs do abide the outcome of the main suit.

It is so ordered.

Dated, signed and delivered in Nairobi on this 11th day of December 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Orenge with Mr. Ongeru for the Plaintiff

No appearance for the Defendant

Kajuku - Court Assistant