



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC SUIT NO. 197 OF 2017

TERRAZO ENTERPRISES LIMITED.....PLAINTIFF/APPLICANT

=VERSUS=

HELENA NJERI MBUGUA.....DEFENDANT/RESPONDENT

RULING

1. The Plaintiff /Applicant filed a notice of motion dated 9th February 2017 in which it sought the following orders:-

1. Spent

2. Spent

3. Spent

4. Spent

5. That pending the hearing and determination of this suit, this honourable Court be pleased to issue a temporary injunction restraining the Defendants/Respondents or their agents, employees, servants, assigns or any other person whomsoever from selling, disposing, advertising for sale, charging, dealing or interfering with, constructing on, developing and/or trespassing over LR No.209/7260/61 in any way whatsoever.

6. That this Honourable Court be pleased to grant the Applicant leave to forcibly evict the Respondent from LR No.209/7260/61 forthwith.

7. That the respondent doth and is hereby ordered to, handover vacant possession of L.R 209/7260/61 to the Applicant forthwith.

8. That the OCS Pangani Police Station and or any other in charge of Administration Police of Nairobi, Eastleigh Sub County, or any officer acting under them be and are hereby ordered to implement, enforce and or supervise the implementation and or enforcement of the forceful eviction of the Respondents.

9. That cost of this Application be provided for.

2. The applicant contends that it purchased LR No. 209/7260/61 (suit property) from Frabill Company Limited which was the allottee of the suit property. The property was registered in its name but that the respondent has trespassed into the suit property and put up a structure on the same without its consent.

3. The respondent has opposed the applicant's application based on a replying affidavit filed in court on 31st May 2017. The respondent contends that she bought the suit property from Risk Management (Africa) Limited which was the allottee of the suit property. She took possession of the suit property and constructed a seven storey apartment which is occupied by tenants. The apartment was constructed in 2007 and has since charged the suit property to Equity Bank Limited.

4. The respondent states that the applicant cannot be granted the orders it is seeking as some orders are calling for mandatory orders which cannot be granted at interlocutory stage. She questions where the applicant was when she was building only to come up and claim the property when she has completed construction.

5. I have considered the applicant's application as well as the opposition to the same by the respondent. Both the applicant and the respondent are claiming the same property. The applicant bought the suit property on 7th April 1999. The respondent bought the same property on 15th August 2004. Both parties were given beacon certificates by the City Council of Nairobi. The applicant was given its beacon certificate on 10th June 2003. The respondent was given her beacon certificate on 4th December, 2006.

6. The allotment to Frabill Company Limited was given on 13th December 1995. The allotment to Risk Management was given on 15th August 2004. The applicant is seeking to evict the respondent from the suit property and for vacant possession. These orders are mandatory in nature and cannot be granted at interlocutory stage. There are no special circumstances which can call for issuance of the mandatory orders at interlocutory stage.

7. The applicant in the application for injunction is seeking to bar the respondent from charging the suit property or even constructing on it. There is already a seven storey building which is complete and tenants are in occupation. One wonders where the applicant was when all this was happening. When there are serious conflicts of facts, the best order to be given is an order for the maintenance of the status quo until the case is fully heard see **Ougo & another –Vs- Otieno [1987] KLR 364 of 365** where the Court of Appeal held that the general principle is that where there are serious conflicts of facts, the trial court should maintain the status quo until the dispute has been decided in a trial.

8. Since the parties herein are claiming the same property and each party has their own documents, I will order that the *status quo* obtaining at the filing of this suit be maintained until this dispute is decided in a full hearing. Costs in the cause.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 5th day of February ,2018.

E.O.OBAGA

JUDGE

In the absence of parties who were aware of the date and time of delivery of Ruling

Court Assistant : Kajuju

E.O.OBAGA

JUDGE