



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.76 OF 2018

MARY NJERI NGUGI.....PLAINTIFF

VERSUS

FEDERAL INVESTMENT LIMITED.....DEFENDANT

RULING

(Application for injunction; plaintiff having been owner of Suit land; defendant moving to advertise the land purportedly in exercise of a chargee's statutory power of sale; suit land registered in name of defendant; no charge registered; plaintiff claiming that she has never had any dealings with the defendant and asserting that the defendant's registration is fraudulent; no response by defendant; no explanation as to how the defendant is exercising a chargee's statutory power of sale while land is in its name and no charge is registered; prima facie case established; application for injunction allowed).

1. This suit was commenced through a plaint which was filed on 15 February 2018. In the plaint, the plaintiff has pleaded that she is the registered proprietor of the land parcel Nakuru Municipality/ Block 28/279 (the suit land). She has averred that on 5 February 2018, she was informed that her property had been advertised for sale through a public auction. This prompted her to do an official search which reflected that the title to her land is in the name of the defendant. It is the position of the plaintiff that this was done fraudulently, as she never executed any conveyance in favour of the defendant, and has never entered into any sale agreement with the defendant. She has averred that in any event, if she took a loan from the defendant, that would have been registered as a charge, which is not the case. It is her view that the advertisement is intended to cover up the fraud which has been perpetuated by the defendant. In the suit, the substantive prayer sought is for an order of cancellation of the defendant's title to the suit land, and an order that the register be rectified, so as to reflect the plaintiff as owner.

2. Together with the plaint, the plaintiff filed an application for injunction, seeking to have the defendant restrained from selling the suit land and for an order of inhibition, restricting the registration of any disposition in respect of the suit land pending hearing and determination of the suit. It is that application which is the subject of this ruling.

3. Despite being served, the defendant has filed nothing to oppose this motion. The only material that I have is therefore that presented solely by the plaintiff.

4. In her supporting affidavit, the plaintiff has annexed a copy of her title deed and a copy of the notice advertising her property for sale. She has also annexed a copy of the official search which shows that the defendant became registered as proprietor on 21 November 2017 and a copy of title deed issued in the name of the defendant on the same day.

5. I have considered the application. The plaintiff contends that she has never had any dealings with the defendant. I have nothing from the defendant to contradict this. I have noted that the land has been offered for sale by public auction, but there is no charge registered against the title, and I am at a loss as to how the land is being sold on account of a loan, without there being a charge, or any other evidence that the title was used as security for a loan. I am also at a loss as to how the defendant got registered as proprietor on 21 November 2017, yet the land is being offered for sale by way of public auction for a loan, and even if we take into account the 3 months for issuance of a statutory notice, these have not lapsed. I think the plaintiff has demonstrated, prima facie, a case that the defendant acquired title to the suit land by way of fraud. The plaintiff stands to suffer irreparable loss if the land is sold to third parties and I feel that it is necessary for the orders of injunction sought to issue.

6. I therefore allow this application and make the following orders :-

(i) That the defendant and/or its servants/agents is hereby restrained from offering for sale, advertising for sale, selling, charging, leasing, or in any other way enter into any dealings over the land parcel Nakuru Municipality/Block 28/279 until this case is finalized.

(ii) That the defendant is hereby stopped by an order of injunction, from taking possession of the land parcel Nakuru Municipality/Block 28/279 until this case is finalized.

(iii) That there is hereby issued an order of inhibition, prohibiting the registration of any disposition in the register of the land parcel Nakuru Municipality/Block 28/279 until final orders of this court.

(iv) That the costs of this application shall be to the plaintiff.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 18th day of April 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Ms. Cheruto holding brief for Mr. Githui for the plaintiff/applicant.

No appearance on the part of the defendant/respondent.

Court Assistant: Carlton Toroitich.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU