



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

CIVIL SUIT NO. 437 OF 2017

THOMAS OCHOLA.....APPLICANT/PLAINTIFF

-VERSUS-

ABUBAKAR MWAMCHERA.....RESPONDENT/DEFENDANT

RULING

1. For determination is the notice of motion dated 29.11.17 brought under the provisions of Order 40 of the Civil Procedure Rules. The Plaintiff/Applicant prays for orders:

1. Spent

2. Spent

3. That this Honourable Court do issue an order of temporary injunction restraining the Respondent by himself, agents, employees and/or any one working under him from trespassing, constructing a house and/or having any dealings with Plot No. Subdivision Number 10127 (Original No. 239/63) Section II/M.N pending hearing and determination of this suit.

4. That O.C.S Nyali police station to supervise execution of this order.

5. That the costs of this suit be provided for.

2. The application is supported by the grounds on the face of it and the affidavit of Thomas Ochola.

3. The application is opposed by the replying affidavit of the defendant dated 26.2.2018.

4. I have read and considered both the pleadings filed as well as the written submissions. It is not disputed that both parties are claiming the same parcel of land No. MN/II/10127. The defendant concedes undertaking constructions on the land because he purchased it on 23.6.17 (**annexture AMI**). The plaintiff avers the defendant's construction works amount to trespass as he is the registered owner of the suit property. He annexed copies of transfer executed in his favour and a certificate of title in his name (**annextures marked "A" & "B" in the affidavit in support**).

5. The plaintiff's interest was registered on the title on 17th April 2015 while the defendant only has a sale agreement dated 23.6.2017 as evidence of ownership. The defendant has not annexed a certificate of official search to confirm that at the time of his purchase, the property was in the name of First Burton Developments who is indicated as the vendor. The defendant deposition that the plaintiff's title is a forgery is not been supported by any material evidence annexed to the replying affidavit.

6. In this case, it is only the plaintiff who has exhibited title. Whether the same was acquired through forgery or not can only be determined during the hearing of the case. For this reason, I am satisfied that the plaintiff has demonstrated that he has a prima facie case with a probability of succeeding.

7. Secondly the balance of convenience tilts in favour of the plaintiff. It will serve no useful purpose to allow the defendant to continue incurring more cash on the structure which if the Court reaches a finding after the hearing of the case that the plot genuinely belongs to the plaintiff such structure shall be demolished.

8. Accordingly I am persuaded that the notice of motion dated 29th November 2017 is merited. The same is allowed by confirming the

orders of injunction in terms of prayer 3 of the motion. The O.C.S. Nyali shall help ensure that law & order is maintained during the compliance of the order. Costs of the motion awarded to the plaintiff.

Dated, signed & delivered at Mombasa this 31st day of July 2018

A. OMOLLO

JUDGE