



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 219 OF 2017

JOSEPHINE MUTHONI NJERI.....APPLICANT

=VERSUS=

JOASH KENGERE.....RESPONDENT

RULING.

1. The plaintiff/applicant filed a Notice of Motion dated 29th March 2017 in which she sought for an injunction restraining the defendant/respondent whether by himself or his servants from trespassing on, wasting ,constructing on, alienating or in any other way interfering with title No. Nairobi/Block 105/444 (suit property).The plaintiff is the registered owner of suit property. She states that in or around 21st February 2017 , the respondent and his agents trespassed into the suit property, chased away her employees who were fencing the suit property and started constructing a perimeter fence around the suit property.

2. The applicant complained to the Nairobi City County Director of Planning compliance and enforcement who issued the respondent with a notice to pull down the illegal wall but that the respondent ignored the notice and instead continued with the illegal construction of the wall. The City County Government proceeded to demolish the wall. The respondent has since stationed rowdy youths on the suit property who have prevented the applicant from accessing the property.

3. The respondent opposed the applicant's application based on a replying affidavit sworn on 5th May 2017. The respondent contends that he is the right owner of the suit property having purchased it from its previous owner one Denis Ochieng Radonji on 3rd June 2014. He states that he visited the offices of Embakasi Ranching Company Ltd where he was assured that Mr Denis Ochieng Radonji was the owner of the suit property. He then moved in and erected a perimeter fence around the suit property. The applicant came and pulled down the fence. The respondent contends that the title held by the applicant must have been obtained fraudulently.

4. I have carefully considered the applicants' application as well as the opposition to the same by the respondent. I have also considered the submissions filed by the parties herein. This being an application for injunction I must decide whether the applicant has met the threshold for grant of the injunction. The purpose of a temporary injunction is to preserve the property until the dispute is determined.

5. In the instant case, it is clear that as at the time the applicant moved to court, the applicant was already in occupation of the suit property. Though the applicant claims that the Nairobi City County issued a compliance notice after which it demolished the perimeter fence erected by the respondent, there is nothing to show that that was the case. What the applicant has annexed to her affidavit is a copy of a letter she wrote complaining about what the respondent was doing.

6. Other than a copy of title, the applicant has not given any history as to how she came to acquire the title. The title was issued on 25th October 2016. The respondent bought the suit property on 3rd June 2014. An injunction cannot be granted in the terms prayed for by the plaintiff. If the court were to issue the injunction as prayed, it would amount to sanctioning the eviction of the respondent.

7. In a case where there are serious conflicts of facts as in this case, the proper order to be given by the court is an order for maintenance of the status quo until the dispute is determined in a trial. This was the holding in the case of **Ugo & Another Vs Otieno (1987) KLR** at page 364 where the court of appeal stated as follows:-

“ 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. As there are serious conflicts as to who could be the rightful owner of the suit property, I will order that status quo in respect of LR No. Nairobi/Block 105/4441 should be maintained. For avoidance of doubt the status is that it is the respondent who is in occupation of the property. However there should be no further construction until this suit is heard and determined.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 26th day of July 2018.

E.O.OBAGA

JUDGE

In the presence of :-

Mr Gitonga for M/s Ndungu for Plaintiff/Applicant

M/s Kinuthia for Mr Ndanda for Defendant/Respondent

Court Clerk: Hilda

E.O.OBAGA

JUDGE