



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC NO.1382 OF 2016**

**MURANG'A RAOD MOTOR MART LIMITED.....DEFENDANT**

**=VERSUS=**

**ROCKVILLE JUNIOR ACADEMY LIMITED & 5 OTHERS.....DEFENDANT**

**RULING**

1. This is a Ruling in respect of an amended Notice of Motion dated 20<sup>th</sup> March 2017 which seeks the following orders:-

**1. Spent**

**2. Spent**

**3. That an order of injunction do issue restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> defendants, their servants, servants and or employees and or anyone else claiming ownership under either of them from disturbing, trespassing, alienating, claiming rights or ownership and or interfering with the plaintiff's quiet possession, peaceful enjoyment and or ownership of all that parcel of land known and registered as LR No. Nairobi Block/107/1133 pending the hearing and final determination of the suit herein.**

**4. That an order to issue compelling the 1<sup>st</sup> defendant to produce before the court all original title documents to his property, land reference No. Nairobi Umoja/Block/107/1/1133.**

**5. That costs of this application be borne by the Respondents.**

2. This suit was originally filed against three defendants but three more defendants were brought on board through amendment. On 20<sup>th</sup> December 2017, this suit was consolidated with ELC 706 of 2011 and ELC 174 of 2017. Directions were given that ELC of 1382 of 2016 was to be the lead file. The first defendants in ELC 706 of 2011 is a director of the plaintiff in ELC 1382 of 2016. An injunction had been given in ELC 706 of 2011 restraining the defendants therein from in any way interfering with the suit property until hearing and determination of the suit. The injunction orders have not been set aside. The injunction orders were given on 30<sup>th</sup> January 2012.

3. The applicant's director who is the second defendant in ELC 706 of 2011 contends that he entered into an exchange agreement with John Ndirangu, the second defendant in ELC 706 of 2011 for the purchase of the suit property. The said John Ndirangu Kariuki assured him that though the suit property had not been registered in his name, he had purchased the same from its registered owners messrs Gerald Makau and Esther Mwangi and that the said John Ndirangu Kariuki was going to ask the registered owners of the suit property to transfer it directly to the applicant.

4. The applicant's director met the registered owners of the suit property and thereafter, the applicant's advocates carried out due diligence after which the suit property was transferred to the applicant. In May 2010, the second respondent who is a director of the first respondent started erecting a fence round the suit property. The applicant made a complaint at Buruburu Police Station who commenced investigations which investigations revealed that the documents which the first and second respondents had could not have been genuine. The applicant did not however take any court action to assert its rights until 2016 when it filed this application seeking the orders indicated in paragraph 1 herein above.

5. The first and second respondents opposed the applicant's application based on a replying affidavits sworn on 28<sup>th</sup> November 2016 and 17<sup>th</sup> April 2018. In the replying affidavit sworn on 28<sup>th</sup> November 2016, the first and second respondents have given an account of how the first respondent acquired the suit property and obtained approval to put up a school. The first and second respondents have also indicated on how the directors of the applicant have sought to frustrate them by pulling down the perimeter fence they erected. The efforts by the first and second respondents to report the activities of the applicant have fallen on deaf ears as the applicant apparently enjoys police protection or

police have opted not to act on their complaints.

6. The first and second respondents contend that the applicant was trying to grab the suit property by exploiting an error which occurred upon registration of the suit property in favour of the first respondent. That error was traced to a manual alteration on the registered lease document. The error has since been rectified and the suit property has since been sold to the fourth respondent in this suit. The first and second respondents contend that the applicant has never occupied the suit property. The applicant only invaded the suit property in April 2018 and started putting up a fence even before a ruling is delivered in respect of its application.

7. The fourth respondent opposed the applicant's application through a replying affidavit sworn on 12<sup>th</sup> June 2017. The fourth respondent contends that the amended notice of motion was filed without leave of the court. The fourth respondent is the registered owner of the suit property the first respondent purchased the same from the first respondent. The fourth respondent took possession of the suit property after completion of the sale agreement in 2016. A transfer in favour of the fourth respondent was registered on 27<sup>th</sup> July 2016.

8. The fourth respondent engaged services of guards who were guarding the suit property day and night until May 2017 when the applicant engineered the arrest of the guards and took advantage to take possession of the suit property where I has started erecting a perimeter fence. The fourth respondent had invited bids for construction of a perimeter fence but this process has not gone on because of the ownership dispute. The fourth respondent contends that it will avail all its documents at the main hearing of the suit.

9. The fifth respondent has sworn an affidavit through its chief accountant, rates department. The fifth respondent states that as per its records, there exists an account in respect of LR No. Nairobi Block/107/1133 which is in the name of the applicant. The fifth respondent also states that they have an account in respect of LR No. Nairobi Block 107/1/1133 which is in the name of the first respondent. The fifth respondent however states that it has nothing to do with registration records at the lands office and the survey office records.

10. In a further affidavit sworn on 4<sup>th</sup> October 2017, the applicant's director responds to the issues raised in the replying affidavit of the fourth respondent. The applicant takes issue with the manner in which rectification of records of ownership of the suit property was undertaken by the office of the chief land registrar. The applicant also emphasises on the issue of possession which it claims it has. The applicant further raises issues as to the discovery of land cartels at the county government; that the cartels were being operated from the office of the person who sold land to the first respondent's directors.

11. I have carefully considered the applicant's application as well as the opposition to the same by the first, second and fourth respondents. The fifth respondent only put in an affidavit clarifying on the accounts which they hold. This being an application for injunction, the court is expected to determine whether the applicant has demonstrated that it has a prima facie case to warrant issuance of an injunction. The court is not expected at this stage to determine which party has genuine documents or not. That is a matter which is left for trial.

12. I have carefully gone through the lengthy affidavits filed by the applicant and the first and second respondents as well as that of the fourth respondent. What emerges clearly is that it was the first respondent which was in possession of the suit property way back in the year 2010. Indeed the first respondent moved to court in ELC No.706 of 2011 where it obtained injunction orders against the defendants in ELC 706 of 2011. The first defendant in that is a director of the applicant company in this case. The second defendant is the one who sold the suit property to the applicant. It is therefore clear that the applicant was not in possession of the suit property as it claims.

13. The affidavits by the first and second respondents as well as that of the fourth defendant clearly shows that the applicant took possession after it disclosed the original claimant to the land and later the fourth defendant. The issue of the existence of LR No. Nairobi Block /107/1/1133 and Nairobi Block 107/133 has been explained. The suit property is the same on the ground. The error on the registration has since been sorted out. It is not for the court to say at the moment whether that rectification was done legally or not. The fact remains that as matters stand, the title to the suit property is now held by the fourth defendant.

14. The applicant is seeking for injunction on the ground that it is the one in possession of the suit property. I have already stated herein above that the applicant came into the suit property despite there being orders restraining its director from interfering with the suit property. It will be inequitable for an applicant to come into a disputed property through illegal means and ask the court to protect such acts. I do not therefore see any prima facie case which the applicant has to warrant issuance of an injunction.

15. I cannot even grant an order of *status quo* because there are no serious conflicts of facts in this case, to warrant issuance of an order of status quo as was stated in the case of **Ougo & another Vs Ochieng ( 1987) KLR 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 status quo until the dispute has been decided in a trial”.***

As I have said herein above, the status quo which the applicant wants maintained is the one which it has acquired by design and the court cannot sanction that. The suit property has since been transferred and is now in the name of the fourth respondent. As such no order can be granted to compell the first respondent to produce what they do not have. I therefore proceed to dismiss the applicant's application with costs to the first, second, fourth and fifth respondents. It is so ordered.

**Dated, Signed and delivered at Nairobi on this 19<sup>th</sup> day of JULY 2018.**

**E.O.OBAGA**

**JUDGE**

In the presence of :-

Mr Juma for Mr Murage for Plaintiff

Mr Mboya for 1<sup>st</sup> and 2<sup>nd</sup> defendant

Mr Kefah for Mr Ishmail Nyaribo for 5<sup>th</sup> defendant

Mr Muturi for Mr Jomo Nyaribo for 4<sup>th</sup> defendant

Court Clerk: Hilda

**E.O.OBAGA**

**JUDGE**