



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC. NO. 18 OF 2014
KENYA AFRICAN NATIONAL TRADERS &
FARMERS UNION (KANTAFU).....PLAINTIFF
VERSUS
KOMA ROCK RANCHING &
FARMING CO-OPERATIVE LIMITED.....DEFENDANT
RULING

What is before me is an Application dated 30th August, 2016 and filed by the Plaintiff.

In the Application, the Plaintiff is seeking for the following orders:

- 1. THAT pending the hearing and determination of this suit, an inhibition do issue inhibiting the registration or any dealing with the parent Title No. DONYO SABUK/KOMAROCK BLOCK 1/599 and any other title resulting from the sub-division of the said parent title.**
- 2. THAT the officials of the Defendant/Respondent be summoned to appear in Court to show cause why stern action cannot be taken against them for altering the status of Title No. DONYO SABUK/KOMAROCK BLOCK 1/599 before the conclusion of the main suit hereof.**
- 3. THAT the cost of this application be approved for.**

The Application is premised on the ground that the Defendant has unlawfully altered the status of the suit property by sub-dividing it; that the transfer of the suit property offends the principle of *ut pedente lite nihil innovetur* and that the Defendant is guilty of contempt for interfering with a matter of which the court is seized of.

The Plaintiff's Application is supported by the Affidavit of Kimani Wanyoike who has deponed that he lawfully bought the suit property from a member of the Defendant; that as they waited for a formal transfer of the suit property to the Plaintiff, they discovered that the Defendant had acquired a title to the land and that while this suit was pending, the Defendant went ahead and changed the character of the land.

The Plaintiff's chairman deponed that in order to preserve the suit property, an order of inhibition should issue.

In response to the Plaintiff's Application, the Defendant's chairman deponed that there is no court order barring them from dealing with the suit property; that the doctrine of *Pendete lite* is redundant and contrary to the Constitution and that the alleged seller of the suit property to the Plaintiff has never been a member of the Defendant.

In his submissions, the Plaintiff's advocate submitted that while this matter is pending, the Defendant went ahead to alienate the subject matter; that the Defendant's act was intended to defeat the Plaintiff's case and that the Defendant confirmed in their letter of 28th September, 1993 that Rose Mwanzia was their member number 125.

The Plaintiff's Counsel submitted that under Section 13 (7) of the Environment and Land Court Act, this court can grant any relief it deems fit and just; that at the time of filing this suit, the suit land was in the name of the Defendant and that on 22nd August, 2014, the title to the suit property changed hands.

The Defendant's counsel on the other hand submitted that the Defendant has at all material times been the registered owner of the suit property; that the purported seller, Rose Mumbua Mwanzia, is not a party to this suit and that the law of contract is clear that contracts are binding as between the parties to the contract.

Counsel submitted that the Plaintiff's Application is only meant to delay the matter.

The Defendant's counsel further submitted that the doctrine of *lis pedence* is not applicable in Kenya; that there are no injunctive orders in this matter and that the said doctrine is not applicable where there are no injunctive orders.

The Defendant's counsel finally deponed that for one to be cited for contempt of court, there must be an order of the court and that there is no injunctive order in this matter.

Both the Plaintiff and the Defendant's counsel relied on authorities which I have considered.

In its Plaint dated 6th March, 2014, the Plaintiff averred that on 11th November, 1993, it purchased the suit property from Ms. Rose Mwanzia. The Plaintiff has annexed an agreement dated 11th November, 1993 to support the argument.

The said agreement shows that the Plaintiff purchased the suit property from a Ms. Rose Mumbua Mwanzia who is shown to have been a member number 125 in the Defendant's society.

Indeed the question of whether Rose Mwanzia was ever a member of the Defendant can only be determined at trial.

Considering that the Defendant has not denied that it is not dealing in the suit property, and in view of that fact that the issue of who is the lawful owner of the suit property is pending before this court, the orders being sought by the Plaintiff should issue to prevent any further dealings in the suit property.

Although the Plaintiff is seeking for an order to cite the Defendant's officials for contempt, the record does not show that the Defendant was served with any order of this court. Consequently, such an order cannot issue.

For those reasons, I allow the Plaintiff's Application dated 30th August, 2016, in the following terms:

- a) Pending the hearing and determination of this suit, an order of inhibition to issue inhibiting the registration of any dealing with the parent title No. Donyo Sabuk/Komarock Block 1/599 and any other title resulting from the sub-division of the said parent title.**
- b) The costs of the Application to be in the cause.**

It is so ordered.

Dated and Delivered at Machakos this 27TH day of JANUARY, 2017.

O. A. ANGOTE

JUDGE