



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC CASE NO. 282 OF 2012

NIRISH CHANDALUR SHAH PLAINTIFF

VERSUS

KITANGILA LIMITEDDEFENDANT

WISDOM PROPERTY

AGENCIES LTD.....PROPOSED INTERESTED PARTY

RULING

The Application by the 2nd Proposed Interested Party is dated 5th March, 2015. In the Application the Applicant is seeking for the following orders:

(1) That this Honourable court be pleased to grant leave to the applicant to be joined as an Interested Party in the suit herein and be allowed to file documents in relation to the suit herein.

(2) That the Plaintiff and the Defendant whether by themselves or their servants or Agents, Advocates or any other persons acting for and/or on their behalf, be restrained by an order of injunction from doing the following acts or any of them, that is to say from further dealing in, disposing off, occupying, using or otherwise howsoever at any other time from or by completing by conveyance or transfer or any sale concluded by private treaty or leasing, letting or otherwise howsoever interfering with the ownership of title to and/or interest in ALL THAT property known as L. R. No. 10426/7 and or any part and or portion thereof and or more particularly ALL and or any of the purported subsequently subdivided parcels derived from the same pending the hearing and eventual determination of this application inter-partes.

(3) That the Defendant be ordered to produce and to show to this Honourable Court the Certificate of Title in respect of L.R/10426/7 which they may have obtained pursuant to the Amended Decree dated 18th July, 2013 and also to produce and to show to this Honourable Court the resultant Certificates of title in respect of the illegally subdivided parcels derived from the same and the same be surrendered and deposited in court pending the hearing and determination of the application interpartes.

(4) That the Commissioner of lands be enjoined in these proceedings as the 2nd Defendant to explain how the L. R. No. 10426/7 and its subsequent subdivided parcel came to be registered.

(5) That the Honourable Court be pleased to order that during the pendency of this suit ALL FURTHER REGISTRATION or change of registration in the ownership, leasing, subleasing, allotment, user, occupation or possession or in any kind of right, title or interest in ALL THAT parcel of land known as L.R. No. 10426/7 and its subsequent subdivided parcels with any Land Registry, Government Department, and all other registering authorities BE AND IS HEREBY prohibited.

(6) That the decree obtained by consent by the Plaintiff and Defendant herein dated 18th July, 2013 be set aside.

(7) That the costs of this application in any event be provided for.

(8) That the applicant be at liberty to apply for further orders and/or directions as the Honourable Court may deem fit to grant.

The Application is premised on the grounds that the Plaintiff and the Defendant colluded to have the suit filed and swiftly concluded it to steal a March from the proposed Interested Party and other parties that are involved in Nairobi HCCC. No. 2316 of 2007; that there were existing orders in Nairobi HCCC. No. 2316 of 2007 relating to the suit property and that the proposed Interested Party is the lawful proprietor of L.R. No. 10426/7.

The Applicant's director filed a detailed Affidavit showing the nexus between this suit and Nairobi HCCC No. 2316 of 2007 in which the Applicant is the 6th Defendant.

The Applicant's advocate also filed detailed submissions and authorities which I have considered.

The Plaintiff's and the Defendant's advocates did not file submissions.

Indeed, this Application is intertwined with the Application dated 14th August, 2013 whose Ruling I have already delivered.

Considering that the Applicant was also a party in Nairobi HCCC.2316 of 2007, and in view of the fact that this court has already set aside the Decree in this matter and directed that the two suits be heard together, I find, by parity of reasoning, that the Applicant herein has established a prima facie case with chances of success to warrant the issue of injunctive orders pending the hearing and determination of the two suits.

For those reasons, and for the reasons that I gave in my Ruling in respect of the application dated 14th August,2013, I allow the Application dated 5th March, 2015 in the following terms.

(a) That the 2nd Interested Party/Applicant be and is hereby enjoined in this suit as a Defendant.

(b) That the Plaintiff and the Defendant whether by themselves or their servants or Agents, Advocates or any other persons acting for and/or on their behalf, BE AND ARE HEREBY restrained by an order of injunction from doing the following acts or any of them, that is to say from further dealing in, disposing off, occupying, using or otherwise howsoever at any other time from or by completing by conveyance or transfer or any sale concluded by private treaty or leasing, letting or otherwise howsoever interfering with the ownership of title to and/or interest in ALL THAT property known as L. R. No. 10426/7 and or any part and or portion thereof and or more particularly ALL and or any of the purported subsequently subdivided parcels derived from the same pending the hearing and eventual determination of this suit and Nairobi HCCC. 2316 of 2007.

(c) That an order be and is hereby issued that during the pendency of this suit ALL

FURTHER REGISTRATION or change of registration in the ownership, leasing, subleasing, allotment, user, occupation or possession or in any kind of right, title or interest in ALL THAT parcel of land known as L.R. No. 10426/7 and its subsequent subdivided parcels with any Land Registry, Government Department, and all other registering authorities BE AND IS HEREBY prohibited.

(d) The Plaintiff and the Defendant to pay the costs of the Application.

It is so ordered.

Dated, signed and delivered in **Machakos** this 27th day of **January, 2017**.

O. A. ANGOTE

JUDGE