



REPUBLIC
IN THE ENVIRONMENT & LAND COURT

AT NAIROBI

ELC CASE NO. 11 OF 2015

PINK PEARL INVESTMENT LIMITED.....APPLICANT

=VERSUS=

ALL NOOR HILLOW HUKA.....1ST RESPONDENT

CHIEF LAND REGISTRAR.....2ND RESPONDENT

COUNTY LAND REGISTRAR, NAIROBI.....3RD RESPONDENT

THE ATTORNEY GENERAL.....4TH RESPONDENT

THE CS, MINISTRY OF LANDS & HOUSING.....5TH RESPONDENT

NAIROBI COUNTY GOVERNMENT.....6TH RESPONDENT

RULING

BACKGROUND

1. The applicant is a limited liability company which is the registered owner of LR No.1870/111/47 (suitland). The suit land was initially registered in the name of George Edwin Amolo (deceased). The suitland was sold to a company called Bellway Gardens Limited by the executors of the Estate of the deceased. The suit land was later transferred to the applicant which is a sister Company of Bellway Gardens Limited.

2. At the initial stages, the applicant used to pay land rates and rent using the name of the deceased. The applicant later changed and started paying land rent and rates in its name. Sometime in or around October 2014, someone by name Harish Patel approached one of the directors of the applicant and informed him that the suitland now belonged to someone from state house. That state house person only identified as a Mr Wambugu was willing to refund, the applicant all that it spent in purchasing the property with interest until then. This aroused the applicant whose directors made a complaint at parklands Police Station.

3. The applicant later came across a land payment request in the name of first Respondent. The land payment request was in respect for rent for the year 2015. The applicant's directors went to the lands office to carry out a search but were informed that the file in respect of the suit land was missing. The applicant suspected someone was trying to defraud it of the suitland. This is the time it moved to court and filed a suit against the Respondents as well as a Notice of Motion dated 9th January 2015 in which it

seeks the following reliefs:-

1. Spent

2. Spent

3. Spent

4. This Honourable Court be pleased to grant temporary injunction pending the hearing and determination of this application prohibiting the 2nd, 3rd, 4th and 5th Respondents from transferring, alienating, registering any instrument, varying any instrument or in any other manner dealing with the suit property and interfering with the applicant's quiet possession of the suit property.

5. This Honourable Court be pleased to grant temporary injunction pending hearing and determination of the suit filed herewith prohibiting the first Respondent whether by himself or through his agents, servants, employees or persons acting under him from transferring, alienating, encroaching, registering any instrument or in any other manner dealing with the suit property and interfering with the applicant's quiet possession of the suit property.

6. This Honourable Court be pleased to grant temporary injunction pending the hearing and determination of the suit filed herewith prohibiting the 2nd, 3rd, 4th and 5th Respondents from transferring, alienating, registering any instrument, varying any instrument or in any other manner dealing with the suit property and interfering with the applicant's quiet possession of the suit property.

7. Spent

8. The costs of this application be provided for.

APPLICANT'S CONTENTION

4. The applicant contends that when it suspected that there was something wrong going on. Its directors offered an indemnity which indemnity was rejected at the lands office. It asked its advocates to put a Notice in the press cautioning members of the public. The National Land Commission was notified of the developments but they did nothing prompting the applicant to move to Court.

1ST & 6TH RESPONDENT'S CONTENTION

5. The first Respondent opposed the applicant's application through a replying affidavit sworn on 10th April 2015. The first Respondent denies that he has any interest in the suitland and that his name may have been used by persons who had a fraudulent scheme. That the application ought to be rejected as he has no interest in the property.

6. The sixth Respondent has opposed the applicant's application based on a Replying Affidavit sworn on 11th May 2015. The sixth Respondent contends that it was improperly joined in this suit. That the application should not be allowed.

ANALYSIS

7. When this application came up for hearing, all parties were not opposed to the granting of the orders. It is only the sixth defendant who opposed the application. I have considered the application as well as the opposition to the same by the first and sixth Respondents. There is a land rent payment request issued in the name of the first Respondent. This request is in respect of the suitland which is registered in the name of the applicant. The rent account number is the same as the one used by the applicant. This is what

aroused the suspicion of the applicant. When the applicant went to the lands office, it was told that the file was missing.

8. The applicant's directors offered an indemnity but this was rejected. Its plea to the relevant authorities did not yield anything. The directors of the applicant had been intimidated with a view to relinquishing their interest in the property. The file has since gone missing. What is happening in this matter is typical of the blatant tricks used by land grabbers who want to grab land belonging to others.

CONCLUSION

9. This is a clear case where the orders prayed for should be granted. The parties sued owe the applicant an explanation as to what is happening with the file relating to the suitland. I allow the applicant's application in terms of prayers (4),(5),(6) and (8).

Dated, Signed and Delivered at Nairobi this 26th day of April 2017

E.O .OBAGA

JUDGE

In the presence of:-

M/s Olando for Mr Okello for 1st Respondent

Mr Olao for Ligunya for applicant

Court Assistant: Hilda

E.O .OBAGA

JUDGE