



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
MILIMANI LAW COURTS
ELC SUIT NO.1147 OF 2015

EMROSE ACADEMY LIMITED.....PLAINTIFF

=VERSUS=

DIRECTOR OF SURVEYS.....1ST DEFENDANT

NATIONAL LAND COMMISSION.....2ND DEFENDANT

JOHN MWANGI NDUTA

JOSEPH KAMANDE T/A HUMAMA KOMAROCK

SELP HELP GROUP.....3RD DEFENDANT

NAIROBI CITY COUNTY.....4TH DEFENDANT

RULING

1. This is a Ruling in respect of a Notice of Motion dated 9th November 2015, which seeks injunctive orders against the Respondents. The application also seeks an order of revocation of certificates of title in respect of **LR No. Nairobi/Block 121/246** and **Nairobi/Block 121/247** or any other certificate of titles or leases issued pursuant to subdivision of the two titles. The applicant seeks the assistance of the OCS Kayole Police Station to ensure compliance of the court orders.

2. This case has a disturbing history where some litigants are filing a multiplicity of suits all in the hope of getting favourable orders. There is also a clear element of deliberate attempts to mislead the court which actions are clearly an abuse of the process of the Court.

3. In the instant application, the applicant **Emrose Academy Limited** contends that it is the registered owner of **LR No. Nairobi/Block 121/245**. According to documents in this file, the applicant obtained certificate of lease on **30th July 1993**. This property is comprised of **4.456 hectares**. The applicant contends that it has been on this property since it acquired the same from the Nairobi city Council.

4. In the year 2004, the third Respondent purported to sub divide the property into two portions namely **Nairobi/Block 121/246** and **247**. The third Respondent later entered into lease agreements with the fourth Respondent which the applicant contends was fraudulent. That there is no way its property would have been subdivided yet it had the original certificate of title.

5. The applicant further contends that the suit property has been subject of litigation in Nairobi HCCC No. 4007 of 1994, Nairobi HCCC No. 695 of 2005, Nairobi ELC No. 800 of 2014 , Nairobi ELC No. 989 of 2014 and now the present case. The applicant contends that Nairobi/Block 121/246 and 247 are now again being subdivided into smaller portions for distribution to the members of the third Respondent and that if the orders are not given, it will suffer irreparable loss.

6. The applicant's application is opposed by the third Respondent through a Replying Affidavit sworn on 29th March 2016. The third Respondent contends that there are other suits filed which touch on the same subject matter and that if orders are granted as prayed, they will be in conflict with the orders granted in the other suits. That the applicant is in violation of section 6 and 7 of the Civil Procedures Act.

7. The third Respondent contends that the property belongs to them. That Plot No. Nairobi/Block 121/245 belonged to them. That this plot was later subdivided and it resulted into LR No. Nairobi/Block 121/246 and 247. That the applicant should have filed this application in the other ELC suits which were consolidated and orders of injunction issued in their favour on 20th June 2014, restraining the applicant from trespassing into the suit properties.

8. I have carefully gone through the applicant's application as well as the opposition thereto by the third Respondent. I have also gone through the submissions by counsel for the parties herein. This is an application for injunction which is an equitable remedy. He who seeks this relief has to come to court with clean hands. Besides approaching the Court with clean hands, the applicant has also to show that he has a prima facie case with probability of success.

9. In the instant case, the applicant is proceeding with its application as if LR No. Nairobi/Block 121/245 exists. This property does not exist. This is the same property which was subdivided and it yielded Nairobi/Block 121/246 and 247. Those two resultant properties are registered in the name of the third Respondent.

10. In 1994, the applicant filed a suit against the Nairobi City Council over LR No. Nairobi/Block 121/245. This was in Nairobi HCCC No. 4007 of 1994. According to the applicant, it claims that this case was settled by the Nairobi City Council compensating it Kshs.2,0000,00/=and promising not to interfere with the property. There is no evidence that this was the case. If consent was recorded to that effect, the same has not been shown to court. The successor of the Nairobi City Council is the fourth Respondent in this suit and it is opposing the applicant's claim to the suit lands. It is therefore not possible that there was a settlement as claimed by the applicant.

11. In 2005, the applicant filed a suit against the Catholic Archdiocese of Nairobi and the third Respondent herein, among other parties. This was in **Nairobi HCCC No. 695 of 2005**. The applicant sought an injunction against the defendants. The application for injunction was dismissed with costs in a ruling delivered on **7th June 2006**. The applicant has annexed a copy of the said ruling but has deliberately tried to mislead the court that the court ordered maintenance of **status quo** which is not the case.

12. In 2014 the third Respondent filed **Nairobi ELC No. 800 of 2014**, against the applicant. An application for injunction was made in that suit. When the matter was placed before the judge, ex-parte orders of injunction were granted against the applicant. It is not known what became of those orders after hearing interpartes. The applicant later in the same year filed **ELC No. 989 of 2014**, where it sued the third Respondent among other parties. These two cases were subsequently consolidated and they are still pending. One does not understand why the applicant chose to file this suit instead of filing an application for injunction in those pending suits. When the applicant was confronted with an argument that this suit is subjudice, its counsel was at pains to get out of this by explaining that parties in those other suits were different and that causes of action in the various suits are not the same.

13. There was even an attempt to distinguish the applicant from the parties in the other suits. That Ebrose Academy Limited is different from Embrose Academy Limited or Kuria Gathoni T/A Embrose Academy .With respect to counsel for the applicant this argument does not hold water. The subject of all

the suits stem from one property that is **Nairobi/Block 121/245** which was later subdivided and it resulted into **Nairobi/Block 121/ 246** and **247**. In the Ruling annexed to the applicants supporting affidavit, at paragraph 13, there was an affidavit sworn stating that the applicant in that case was “ **Emrose Academy**” and not “ **Embrose Academy**”. It appears this is the same trick being applied here to try to show that, this suit is not subjudice. This suit will never cease to be subjudice notwithstanding the number of parties who are added or no matter how many times the applicant wants to play around with names of the applicant.

14. A court of law cannot grant orders of injunction which cannot be implemented. **Plot No. Nairobi/Block 121/245** is non-existent. The allocating authority does not support the ownership of the applicant. The applicant has also not come out candidly about how it acquired the plot now in contention. There is no order of cancellation of tittles held by the third Respondent which can be given at interlocutory stage. It is therefore clear that the applicant’s application is for dismissal. It has not shown that it has any prima facie case with probability of success. It has also not demonstrated that it will suffer loss which will not be compensated in damages. It is clear that the applicant attempted to gain entry into the suit land in 2014 and that is why the third Respondent filed ELC No. 800 of 2014. As far back as 2005, the applicant was not in possession of the suit land. This is clear from the Ruling which is annexed to its supporting affidavit. I therefore find that the applicant’s application lacks merit. The same is hereby dismissed with costs to the third and fourth Respondents.

It is so ordered.

Dated, Signed and Delivered at Nairobi this 6th day of April 2017.

E.O .OBAGA

JUDGE

In the Presence of :-

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Court Assistant: Hilda

E.O .OBAGA

JUDGE