



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC CASE NO. 242 OF 2015

ETHICS AND ANTI-CORRUPTION COMMISSION.....APPLICANT

-VERSUS-

JOHN PETER KAMAU RUHANGI.....1ST RESPONDENT

NDERITU WACHIRA.....2ND RESPONDENT

ECOBANK KENYA LIMITED.....3RD RESPONDENT

MATTHEW NDONGA KABAU.....4TH RESPONDENT

NATIONAL LAND COMMISSION.....5TH RESPONDENT

CHIEF LAND REGISTRAR.....6TH RESPONDENT

NYERI COUNTY LAND REGISTRAR.....7TH RESPONDENT

ATTORNEY GENERAL.....8TH RESPONDENT

RULING

1. The notice of motion dated **15th October, 2015** seeks the following orders:

a) Spent

b) Spent

c) Spent

d) Temporary order of inhibition as per Section 68(1) of the Land Registration Act, 2012 to inhibit the registration of any dealings with and/or in land parcel No. Nyeri Municipality/ Block 1105 pending the hearing and determination of the suit or until further or alternative orders are issued by this court.

e) Temporary injunction as per Order 40 Rule 1 of the Civil Procedure Rules to jointly and severally restrain the defendants/respondents by themselves, their respective agents, officers, employees, servants and any other persons claiming through them or under them from accessing, occupying, developing, leasing, charging, selling, disposing of, transferring, wasting, utilizing, using and/or in any other manner dealing in and/or with land parcel No.Nyeri/Municipality Block/1105 pending the hearing and determination of the suit or until further or alternative orders are issued by this court.

2. The application is premised on the grounds on its face and the affidavit of the applicant's investigator, Faith Ngethe, sworn on **15th October, 2015**.

3. The applicant, *inter alia*, contends that the suit property was illegally alienated from its public status to private status.

4. Terming the alienation null and void, the applicant is apprehensive that unless the orders sought are granted, the respondents may further

alienate the suit property rendering the suit for recovery nugatory.

5. The application is opposed on the grounds that it is brought in bad faith. In this regard, it is contended that it is made to circumvent or nullify orders issued in Nairobi Judicial Review Miscellaneous Application No.244 of 2014.

6. The respondent accuses the applicant of having failed to inform the court of the orders issued in the above mentioned Judicial Review application and for having filed a fresh suit instead of extending the orders issued in the application for preservation of the suit property.

7. In response, the applicant through its investigator mentioned herein above, has *inter alia* deposed that the accusation of none disclosure of material facts or possibility of the orders sought clashing with those issued in the Nairobi Judicial Review application cited above are false and misguided.

8. According to Faith Ngethe, the evidence gathered against the respondents shows that the applicant has a credible and strong case against the respondents.

9. Explaining that the orders are meant to preserve the suit property pending the hearing and determination of the suit for recovery, the applicant urged the court to grant the orders sought in order to prevent the 3rd respondent from transferring it to other entities thereby complicating the already complex suit for recovery.

10. The parties filed written submissions which I have read and considered together with the affidavits. I find the sole issue for determination to be whether the applicant has made up a case for being granted the orders sought.

11. In answering this question, I begin by pointing out that the 3rd respondent herein, Ecobank Kenya Limited, vide the Judicial Review proceeding referred to hereinabove, moved the court for the following orders:

a) An order of certiorari removing into the High Court for purposes of quashing the Order made by Land Registrar that led to the registration of a restriction on 8th February, 2012 against all that property known as Nyeri/Municipality/Block 1/ 1105 by which he restrained all dealings until investigations conducted by the Ethics & Anti-Corruption Authority (read the applicant herein);

b) An order of mandamus compelling the Land Registrar and/or such designated Officer to upon presentation register a discharge of charge and transfer by chargee of all that property known as Nyeri/Municipality/Block 1/1105 to Mr. Mathew Ndoga Kabau or such other persons in favour of whom such transfer instrument may be executed;

c) That costs of the application be provided for.

12. The court upon hearing the case presented before it, *inter alia*, observed:

“the 1st respondent is under an obligation to consider an application to discharge the charge and register the transfer in favour of the transferee. However, this court cannot by way of an order of mandamus compel the 1st respondent to register the subject discharge of charge and transfer by chargee. The court can only compel the 1st respondent to consider the same and make a decision one way or the other. However, the 1st respondent is obliged under article 47(2) to furnish the applicant with written reasons after considering the application where the decision is likely to adversely affect the applicant and where no reasons are given, the court would as well be entitled to conclude that there were no good reasons for exercising the discretion in the manner it was exercised.

Order

Accordingly the orders which commend themselves to me and which I hereby grant are as follows:

i. An order of certiorari removing into this court for purposes of being quashed the decision made by land registrar that led to the registration of a restriction on 8th february, 2012 againstall that property known as Nyeri/Municipality/ Block 1/1105 by which he restrained all dealings until investigations conducted by the Ethics & Anti-Corruption Authority which decision is hereby quashed.

ii. An order of mandamus compelling the 1st respondent to consider the applicant’s application to register a discharge of charge and transfer by chargee of all that property known as Nyeri/Municipality/Block 1/1105 to Mr. Mathew Ndoga Kabau or such other persons in favour of whom such transfer instrument may be executed.

iii. The 1st respondent will bear the applicant’s costs of this suit.”

13. It is the above order which the applicant is accused of circumventing or seeking to nullify through the current proceedings.

14. The question to answer is whether granting of the orders sought in the current application will have the effect of circumventing the above orders.

15. Concerning that issue, having carefully considered the said orders issued in the Judicial Review proceedings hereto, I agree with the respondent’s contention that granting the orders sought will render the order requiring the Chief Land Registrar to consider the 3rd

respondent's application for registration and discharge of charge and transfer of the suit property to Mathew Ndogo Kabau or such other persons in favour of whom such transfer instrument is sought nugatory.

16. Turning to the merits of the application by the applicant, whereas it is in public interest to prohibit further dealings with the suit property pending the hearing and determination of the suit filed by the applicant, I agree with the respondents contention that refusal to grant the orders sought will not render the suit for recovery nugatory. This is so because the plaintiff's case turns on what happened in the past. The applicant will therefore not suffer any prejudice if the orders sought are denied.

17. The upshot of the foregoing is that the motion herein is found to be lacking in merits and dismissed with costs to the respondents.

Dated, signed and delivered at Nyeri this 30th day of May, 2017.

L N WAITHAKA

JUDGE.

In the presence of:

Mr. Mahinda h/b for Mr. Jengo for 1st defendant/

Respondent

N/A for the plaintiff

N/A for the 2nd – 8th defendants/respondents