



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC NO.580 OF 2015

JAMES MBETHE MUCHIRI.....PLAINTIFF/RESPONDENT

=VERSUS=

DANIEL KAIMANI NGURURI.....DEFENDANT/APPLICANT

RULING

1. The Applicant/Defendant filed a Notice of Motion dated 26th January 2016, against the Plaintiff /Respondent restraining him from in any way interfering with some two properties comprised in title No. LR 10904/2 along Kangundo Road in Nairobi County. The applicant also sought an order directing the Management of Embakasi Ranching Company Limited not to effect transfer of the two plots.
2. The Respondent had sold his beneficial interest in two properties described as Plot P 61 (C979) and P 61 B (Map 4 C 373) comprised in LR No.10904/2. The two plots belonged to the respondent's deceased mother who was entitled to the two plots by virtue of her shareholding in Embakasi Ranching Company Limited.
3. The Respondent later filed the present suit in which he claims that the applicant had breached terms of the sale agreement and that the agreements are void ab initio on the ground that he had not obtained grant of letters of administration in respect of the estate of his late mother. As the dispute between the applicant and the Respondent was pending, the Respondent sold the two plots to two other individuals. It is this sale which prompted the applicant to move to court to seek the orders of injunction against the Respondent.
4. The applicant contends that if injunction orders are not granted barring the Respondent from going ahead with what he is doing, he will end up being evicted from the two plots which he has already taken possession and has constructed a permanent house on it.
5. The Respondent has opposed the application on the ground that the applicant entered into the sale agreement with full knowledge that he had no capacity to sell the two plots to him. That the applicant is in breach of the agreements and that he had attempted to refund the amount paid to the applicant who declined to take it.
6. I have considered the applicant's application as well as the objection to the same by the Respondent. This being an application for injunction, the applicant is expected to demonstrate that he has a prima facie case with probability of success. In the instant case the Respondent does not deny that he sold the two plots to the applicant. The Respondent had filed a previous suit against the applicant. His claim in the previous suit was that the applicant had breached the terms of the sale. This suit was however struck out

on the ground that the Respondent had no capacity to sue as he had not obtained letters of administration in respect of the estate of his late mother.

7. When the Respondent filed the present suit, the issue of capacity to deal with the plots belonging to his late mother has been raised. It is clear from the document in this case that the Respondent sold his beneficial interest in the estate of his late mother. The applicant purchased the two properties on the understanding that they belonged to the deceased but that it is the Respondent who was entitled to the same.

8. The Respondent concedes that he entered into agreements with two other individuals. He however claims that the agreements are in respect of loan amounts he took from the two individuals and that the agreements were to act only as security. This argument is without merit. The two agreements are clear that he was selling the two plots to those two persons. He was doing this well aware that he had already sold the two plots to the applicant.

9. The issue of capacity has been raised later and purportedly on advice from a lawyer. When the Respondent started selling the two plots, he was aware that he had no grant of letters of administration. He cannot be allowed to use that argument to keep selling the property in the hope that he will renounce the sale on grounds that he has no letters or confirmed grant.

10. From the documents given by the applicant, it is prima facie clear that he had met all the conditions of the agreement. It is the Respondent who was yet to meet his part of the bargain. I find that the applicant has demonstrated that he has a prima facie case against the Respondent. If the injunction orders are not granted, there is real danger that the applicant may face eviction after the properties are transferred to the third parties.

11. The Respondent seems to be prepared to get the plots back by whatever means. He has already sold the two plots to third parties based on false allegations that the original documents are lost when he knew that he had surrendered them to the applicant. He instead casually claims that he had given those documents to the firm of Mburu Muchua & Co. Advocates and that the same were stolen from the said law firm.

12. The applicant is the one in possession of the two properties. The balance of convenience tilts in his favour. I find that this is a proper case where injunctive orders should be given. Consequently I grant a temporary injunction restraining the Plaintiff/Respondent either by himself, servants, agents, employees and/or representatives from interfering, transferring and or in any other manner from interfering with plots Nos.P 61 (C977) and P 61B (MAP 4 C 373) in LR No. 10904/2Kangundo Road pending the hearing and determination of this suit. The applicant shall have costs of this application.

It is so ordered.

Dated, Signed and Delivered at *Nairobi* on this *8th* day of *May 2017*.

E.O .OBAGA

JUDGE

In the absence of advocates who were aware of the date and time of delivery of ruling.

Court Assistant: Kevin

E.O.OBAGA

JUDGE