



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT

AT MILIMANI

ELC CASE NO. 991 OF 2015

MILICENT MUTHONI MAINA.....PLAINTIFF

=VERSUS=

MARY NYAKINYUA MURICHU.....DEFENDANT

RULING

1. The Defendant/Applicant filed a Notice of Motion dated 31st August 2016, in which she seeks the following reliefs:-

i. Spent

ii. Spent

iii. That the honourable Court be pleased to set aside its orders issued on 17th December 2015, pending the hearing and determination of the suit herein.

iv. That the Honourable Court be pleased to stay contempt of Court against the Defendant/Applicant pending the hearing and determination of this application and suit.

v. That costs of this application be borne by the Plaintiff/ Respondent.

2. The applicant contends that she is the beneficial owner of a plot known as plot No.191 which she bought from Kiambu Dandora farmers Company Limited at a consideration of **Kshs.500,000/=** in the year 2013. That she was not aware of any orders which had been given against her . That she is only aware of a copy of a letter dated 11th December 2015, from M/s Jude and Sheila Associates through her WhatsApp page forwarding a copy of a court order.

3. The applicant further contends that she was never served with application which resulted in the orders issued on 17th December 2015. That she has been harassed by Police who are using orders obtained in respect of plot No. 191 to stop her from going on with construction of her plot known as Plot No. 3177. She therefore wants the orders issued on 17th December 2015 set aside so that she can respond to the application for injunction which resulted in the said orders.

4. The applicant's application is opposed through a replying affidavit sworn by the Respondent on 28th October 2016. The Respondent contends that the applicant was duly served with documents relating to the application which resulted in issuance of the order of 17th December 2015. That the applicant is

claiming that she bought the plot from Kiambu Dandora Farmers Company, Limited which is different from Kwa Miwa Umoja III Welfare Group who was the beneficial owner of the plot which she bought from a member of that group and obtained transfer in respect of plot No. 191.

5. I have carefully considered the application by the applicant and the opposition to the same by the Respondent. The only issue for determination in this application is whether the applicant was served with the application which resulted in the orders which were issued on 17th December 2015. Though the applicant denies service, there is an affidavit of service sworn by Dickson ooko Giani on 5th November 2015. The process server has given details on how he traced the applicant and served her with the application dated 8th October 2015. Again on 13th November 2015, another process server called Samuel O. Obuya served the applicant with a hearing notice for the application which was slated for hearing on 7th December 2015.

6. When the application came up for hearing before Justice Gacheru on 7th December 2015, the Judge was satisfied that there was proper service and granted all the prayers in the application. It is after this that the orders given on 7th December 2015 were issued on 17th December 2015. The Respondent's lawyer later sent a letter forwarding the court order to the applicants' whatsapp page.

7. There is evidence which is uncontroverted that the applicant had been summoned to the Chief's office where the issue of the plot was raised. The applicant was advised to wait for the issue to be settled but she was adamant and has commenced construction on the same despite knowing about the court orders.

8. The applicant is also seeking to stay any contempt of court action . As far as I am concerned, there is no application for contempt which has been filed by the Respondent. There is therefore nothing to stay. I have observed that neither the applicant nor the Respondent has title document to the plot which is in contention. Though the applicant claims that she bought the plot which according to her is plot 3177 at Kshs.500,000/= there is no evidence of such purchase from Kiambu Dandora farmers Company Limited. What she has exhibited is a share certificate from the said company showing that she is a shareholder.

9. The Respondent bought her plot known as plot No.191 from a welfare group. The larger plot which resulted in smaller plots belonged to one Samson Kegengo Ongeru who charged it to National Bank of Kenya. It would appear that the members of Kwa Miwa Umoja III Welfare Group invaded the land and National Bank of Kenya Limited were forced to enter into some arrangement for the group to purchase the property. There is nothing to show that Kiambu Dandora Farmers Company Limited ever bought the property from National Bank of Kenya. It is therefore difficult to understand what interest the company had on the land capable of being sold to the applicant . The title to the property is still held by national Bank of Kenya.

10. I find that the applicant was properly served with the application and hearing Notice. The orders which are being sought to be set aside were lawfully obtained. There is no contempt of court application filed against the applicant and therefore stay orders cannot be given on non-existent contempt proceedings. I find that the applicant's application lacks merit. The same is dismissed with costs to the Respondent.

It is so ordered.

Dated, Signed and Delivered at *Nairobi* on this *2nd* day of *May 2017*.

E. O. OBAGA

JUDGE

In the presence of:-

Mr Jude Onyango for Plaintiff/Respondent

Court Assistant: Kevin

E. O. OBAGA

JUDGE