



REPUBLIC OF KENYA
IN THE E.L.C. COURT OF KENYA AT EMBU

E.L.C. NO. 67 OF 2017

LUKE NJIRU KAGEREKI.....PLAINTIFF

VERSUS

INDUSTRIAL AND COMMERCIAL DEV. CORP.....1ND DEFENDANT

EDWIN NYAGA NYAMURA.....2ND DEFENDANT

RULING

1. By a Notice of Motion dated and filed on 6th June 2016, the Plaintiff sought an order of inhibition to prohibit any dealings with Title No. KAGAARI/WERU/1544 pending the hearing and determination of the suit. The said application cited the provisions of sections 1A, 1B, 3, 3A of the Civil Procedure Act (Cap 21), section 68 of the Land Registration Act 2012 and Order 40 of CPR.
2. The grounds of the application were set out in the said Notice of Motion and the supporting affidavit sworn by the Plaintiff on 6th June 2016. It was stated in the said application that his parcel of land Title No. KAGAARI/WERU/1544 (hereinafter called the “suit property”) was illegally sold by the Defendant (ICDC) under a purported statutory power of sale on or about 23rd May 2008. It was further stated that the interested party dishonestly got registered as the owner of the suit property after the said auction which the Plaintiff had challenged in court.
3. The Plaintiff also stated in his supporting affidavit that the interested party has renewed his attempts to alienate the suit property with the risk that he and his family might be rendered homeless and destitute. He, therefore, sought an order of inhibition to preserve the property pending the hearing and determination of the suit.
4. The said application was opposed by both the Defendant and the interested party. Ms Migwi for the Defendant stated that ICDC sold the property many years ago and the same was now registered in the name of the interested party.
5. Ms Ndorongo for the interested party opposed the said application on the basis of two replying affidavits filed by her client on 19th September 2016. In his affidavits, the interested party stated that he has been in possession of the suit property since 2008 when he bought it in a public auction. He further stated that the Plaintiff had registered a caution against it hence it was not possible to alienate it.
6. Ms Ndorongo submitted that there was undue delay in filing the instant application for an inhibition since it was filed about 8 years after the filing of the suit. She also submitted that there are two previous suits which the Plaintiff had filed in the Magistrates courts over the same subject matter which were dismissed. The latter information came from the bar since there was no affidavit on record or other

evidence to confirm the existence or the conclusion of the two suits.

7. I have considered the rival submissions of the parties. I have noted that this suit has been pending for about 9 years now. This is a matter which is best resolved through a full hearing.

8. The court is aware that although the interested party is the current registered owner of the suit property, the public auction of the property by the defendant is disputed and is the subject of the main suit. The court is also aware that should the suit property change hands into an innocent purchaser for value while the suit is pending, that would complicate the resolution of the current dispute.

9. In view of the foregoing reasons, the court is inclined to make an order for preservation of the suit property pending the hearing and determination of the suit. I believe that the court has a duty to preserve property which is in dispute pending conclusion of any relevant proceedings. See **Shivabhai Patel vs Manibhai Patel [1959] EA 907.**

10. The upshot of the foregoing is that the Plaintiff's application dated 6th June 2016 is hereby allowed in the following terms:

- a. An order of ***inhibition*** is hereby granted prohibiting any dealings with Title No. KAGAARI/WERU/1544 for a period not exceeding 6 months.
- b. The parties shall fully comply with Order 11 Civil Procedure Rules within 21 days from the date of this ruling including framing the statement of issues.
- c. The suit shall be mentioned on 18th July, 2017 to confirm compliance and fix a hearing date for the suit.
- d. Costs of the application shall be in the cause.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **20th day of June 2017.**

In the presence of Mr. Karuti for the Plaintiff, Ms Wairimu for the 1st Defendant and Ms Ndorongo for the 2nd Defendant.

Court clerks Njue/Leadys

Y.M. ANGIMA

JUDGE

20.06.17