



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 1561 OF 2016

SAMSON KANIHU GATHURU.....PLAINTIFF

VERSUS

ESMAN NYANDIKA ONSARIGO..... DEFENDANT

RULING

1. This is a ruling in respect of two separate applications filed by the plaintiff and the defendant. The first application is dated 14th December 2016 and was filed by the plaintiff. The second application is dated 20th December 2016 and was filed by the defendant. Both applications are seeking injunctive orders.
2. The two disputants herein seem to be claiming the same land on the ground but they each claim to be having title documents in respect of the suit property. What is curious is that the titles held by the two claimants are registered under two different regimes of law. The title held by the plaintiff is a leasehold registered under the Registration of Titles Act (now repealed), whereas the title held by the defendant is freehold registered under the Registered Land Act (now repealed)
3. The Plaintiff contends that he bought the suit land from one **Abok James Odera** and transfer was duly registered in his name on 5th November 2012. On the other hand, the defendant contends that he bought the suit land from **Bidii Embakasi Women Group (Kinda)** and was duly issued with title deed on 25th November 2011.
4. The plaintiff contends that on 30th November 2016, the defendant in the company of people identified as surveyors and a contractor went to the said property with intention of demarcating the suit property. That the defendant has since prevented the plaintiff from carrying on construction. That the plaintiff had already submitted building plans to the County Government of Nairobi for approval and that he is the one who has been paying rates and land rent in respect of the property.
5. The defendant on his part contends that he is the owner of the suit property and that he has been in possession of the same. That the plaintiff went and obtained injunctive orders from the court which orders he used to invade the suit property and started digging a foundation in a bid to erect a perimeter fence and start construction on the suit property.
6. I have gone through the documents presented by both the plaintiff and the defendant. The plaintiff has presented documents to show that the suit property is registered in his name as L.R. No. 209/10976. The defendant on the other hand has presented documents showing that he is registered as owner of **LR No. Nairobi/Embakasi Villa Franca/3625**.

7. The defendant is contending that the documents held by the plaintiff are forgeries and that no records exist at the Land Registry under the alleged title shown by the plaintiff. The plaintiff on the other hand alleges that the defendant is the one interfering with the suit property. This is an application for injunction and the court is not expected to delve into the issue of ownership at the moment.

8. Both parties to this dispute are claiming ownership of the suit land. Both have titles which they all assert is the basis of their claim. At the moment the court cannot determine which of the two is a genuine document. In the circumstances of this case the best order to be granted is to issue an order that there be maintenance of the status quo and that no party should proceed to make any development on the property or transfer the property to a third party until the hearing and determination of this suit.

9. The facts as presented in this case show that the defendant is the one who had entered the suit property. This is why the plaintiff moved to court to obtain an injunction and at the same time sought police assistance to enforce the orders which would have been obtained. The applicant would not have sought police assistance if the defendant was out of the suit land. On 11th January 2017 when the court was informed that the defendant had filed an application seeking to injunct the plaintiff from interfering with the suit property, the court ordered that the status quo be maintained. The status quo then was that it was the defendant who was in possession. I therefore order that there should be maintenance of the status quo. For avoidance of doubt, the status quo is that it is the defendant who is in possession of the suit property. There should be no development by any party on the suit property and there should be no transfer or any dealing on the suit land by either party until this suit is heard and determined. Costs of the two applications shall be in the cause.

It is so ordered.

Dated, signed and delivered at Nairobi on this 15th day of **June**, 2017.

E. OBAGA

JUDGE

In the presence of:

M/s Aruka for the defendant

M/s Mburu for Mr. Ndeda for Plaintiff

Court Assistant - Hilda