



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
MILIMANI LAW COURTS
ELC NO. 821 OF 2013

CLEMENT NDUNGU.....1ST PLAINTIFF

HELLEN NDUNGU.....2ND PLAINTIFF

=VERSUS=

SILANGA LIMITED.....1ST DEFENDANT

ROYAL GARDENS LIMITED.....2ND DEFENDANT

FRANCIS KIHONGE NG'ANG'A.....3RD DEFENDANT

LOYCE WANGUI KIBUBA.....4TH DEFENDANT

EDWIN KIBUBA KIHONGE.....5TH DEFENDANT

RULING

1. This is a Ruling in respect of two applications which were consolidated on 2nd September 2015. The first application is dated 31st March 2015. This application sought the lifting of orders given on 23rd July 2013 which orders were registered against title described as LR No. 7960 (IR 8561) and entered as entry number 46. The second application dated 30th July 2015 sought the setting aside of the orders of 13th July 2015 arising from the application of 31st March 2015 and compliance with the Court order given on 1st October 2014.

2. The Plaintiffs in this case had filed an application for injunction against the defendants restraining them from dealing with LR No. 7960 wherein plot Nos. 50 and 51 which are subject of this suit are comprised. When this application was argued interpartes, the court delivered its ruling on 1st October 2014. In the Ruling, the Court found that an injunction would not issue affecting the entire parcel i.e LR No. 7960. The Court however issued an order of status quo preserving plot Nos. 50 and 51 on certain conditions which were clearly spelt out in the Ruling.

3. In the Ruling of 1st October 2014, the court ordered that a joint account was to be opened where the balance of the purchase price of Kshs. 3 Million was to be deposited. The second respondent was to issue a certificate of sale to the applicants in respect of Plot Nos. 50 and 51 pending processing of the title deeds once the deposit was made. The deposit was made as per the court order. A certificate of sale was also given though grudgingly.

4. Prior to the Ruling of 1st October 2014, the court had granted ex-parte orders on 23rd July 2013. The orders were extracted and registered against the title LR 7960(IR 8561) as entry No.46. The effect of the orders of 23rd July 2013 were that they affected the entire parcel No. 7960 when the bone of contention was in respect of plot No. 50 and 51. The ruling of 1st October 2014 effectively vacated the orders of 23rd July 2013 in that it specifically confined the orders to plot No. 50 and 51 as opposed to the entire parcel.

5. The Defendants Advocate Mr Kaburu Miriti moved to Court and filed an application dated 31st March 2015 on behalf of his clients in which he contended that though the orders of 23rd July 2013 had been vacated by those of 1st October 2014, he had been advised by the Registrar of titles that it was good practice that an order of court be obtained lifting the orders. He further went on to state that it was impossible for his clients to transfer sub-divisions to buyers of individual plots because of the subsisting orders. That it was fair that the orders registered in entry number 46 be lifted so that the defendants could enjoy the fruits of the orders of 1st October 2014.

6. The defendants' application was allowed ex-parte on 13th July 2015 . This is because the Plaintiffs advocates who were duly served were not in Court. The absence of the Plaintiff's advocate has been explained in the affidavit in support of the application dated 30th July 2015, and as confirmed in the replying affidavit of Mr Kaburu Miriti sworn on 12th August 2015.

7. I have carefully considered the two applications. There was a Replying affidavit which had been prepared in respect of the application dated 31st March 2015. The same could not be filed because of the Court Rules that such applications be filed not less than 3 days prior to hearing. In that affidavit, the Plaintiffs were in principle not opposed to the same on condition that these two plots i.e No 50 and 51 were protected. I have looked at the entry as registered in entry No. 46. That entry is clear that the orders restraining the defendants was restricted to plot No. 50 and 51. This is why subsequent to this entry, there are other entries showing that the registered owners have been transferring portions of the land to other buyers. It was therefore wrong for Mr Miriti to claim that entry on No. 46 had hindered the process of giving titles to other prospective buyers of his client's land. There was actually no need for Mr Miriti to make the application of 31st March 2015 as the orders registered under entry No. 46 were very clear. They did not restrict the registered owners to deal with other subdivisions as confirmed by the subsequent transfers to various person and entities. The orders of 1st October 2014 were registered as entry No. 47 in the title.

8. Mr Miriti stated in the replying affidavit to the application dated 30th July 2015 that he is not the one who was dealing with processing of titles and that the same was being done by *Kinoti & Kibe Advocates*. This may be the position as confirmed from annexure “ **KM5**” in the supporting affidavit to the application of 31st March 2015 but this does not mean that Mr Miriti did not know what was happening in this matter. The omission of part of the entries in No. 46 may not have been deliberate as it is clear that part of those entries were lost out during the photocopying process.

9. The orders of 1st October 2014 were very clear. Once the joint interest earning account was opened and money deposited in it, the second defendant was to issue a certificate of sale and process titles documents in favour of the plaintiffs. This has not been done. I find that the application dated 30th July 2015 is well founded. I allow prayer (3) of the application dated 30th July 2015 to the extent that the first and second defendants are hereby ordered to complete the registration and obtaining the original certificates of lease in respect of plot No 50 and 51 within parcel of land known as LR No. 7960 and release the original certificates of leases to the Plaintiffs advocates in compliance of the order of 1st October 2014. The application dated 31st March 2015 is dismissed with costs to the Plaintiffs. The Plaintiffs shall also have costs for the application of 30th July 2015.

It is so ordered.

Dated, Signed and Delivered at *Nairobi* on 31st this day of *July, 2017*

E. O. OBAGA

JUDGE

In the Presence of :-

Mr Angaya for Mr Wawire for Plaintiff

Court Assistant: Hilda

E. O. OBAGA

JUDGE