



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC NO. 595 OF 2015

PHIGEOF COMPANY LIMITED.....PLAINTIFF

=VERSUS=

AFTIN CHORICA HASSANOW.....DEFENDANT

RULING

1. This is a Ruling in respect of two application brought by the Plaintiff and Defendant. The one, by the plaintiff is dated 22nd June 2015, and it seeks injunctive orders against the defendant in respect of a property known as LR No.209/11092/5 at City Park Estate – Nairobi. The application by the defendant is dated 22nd February 2016, and it seeks discharge of injunctive orders issued against the defendant and at the same time seeks that the Plaintiff’s Plaint be struck out for disclosing no cause of action against the defendant.

2. The bone of contention in this suit appears to be one parcel of land on the ground. The Plaintiff contends that the parcel of land is known as LR 209/11092/5 whereas the defendant contends that the parcel of land is known as LR No. Nairobi/Block 37/84 which is registered in the defendant’s name. A part from the two parties who are claiming the same land in this case, documents availed herein reveal that there are two others who are claiming the same land. The defendant in this case annexed documents in respect of Nairobi Chief Magistrate’s civil case No. 3245 of 2015, in which he had sued one Abdul Haleem Mohammed and obtained orders of injunction in respect of the property which is the subject of the suit herein. In yet another document availed by the Defenanat, one Stephen Mbutia was also laying claim to the same land.

3. I will first deal with the application by the Plaintiff. The Plaintiff through one of its Directors contends that it was allocated plot No. 209/11092/5. The land was allocated to Penina Gakure in 1978. Penina Gakure then decided to have the land registered in the name of the Plaintiff. A lease agreement was then prepared in the plaintiff’s name. The Plaintiff took possession of the land and gave it to a lady known as Kadogo who had been taking care of it until the defendant came in the company of hired goons who destroyed the fence and house of the caretaker. The matter was reported to parklands Police Station where the two parties were called. It was agreed that both parties to this case do keep off the property until the police completed their investigations.

4. The Plaintiff later put back the caretaker but once again, the defendant came and chased her away. It is after the second incident that the plaintiff decided to file the present application. The defendant has opposed the applicant’s application contending that he is the registered owner of the property. He annexed a certificate of lease issued on 9th September 2014, and a letter from the lands office confirming

that he is the registered owner of the property in contention.

5. In further affidavits the two parties have brought forth documents showing that the documents relied by each party may not be genuine. The plaintiff brought a document from the legal department of the County Government showing that the lease agreement upon which the defendant obtained registration was not drawn by Nairobi city Council the predecessor of the County government. The defendant on the other hand brought a report from the Directorate of Criminal Investigations showing that the lease which the plaintiff says was drawn by Musyoka Anan Advocates was actually not drawn by them.

6. I have carefully considered the documents presented by the partes herein. There are serious contested issues on the documentation held by both parties. The basis upon which the defendant obtained the certificate of lease has been denounced by the city county Government. The same County Government seems not to have records regarding the documents relied on by the Plaintiff though they are in agreement that the firm of **Musyoka Anan & Co. Advocates** were acting for the City Council of Nairobi a fact confirmed by the law firm itself in other documents in the file in this matter. In the case of **Ougo & another Vs otieno (1987) KLR** the Court of Appeal held as follows:-

“The general principle is that where there are serious conflicts of facts, the trial court should maintain status quo until the dispute has been decided in trial”.

7. In the instant case, it is clear that there were no permanent structures in place on the suit property. The temporary structure which had been put up by the plaintiff was pulled down by the defendant. I therefore make an order that there be maintenance of **status quo**. For avoidance of doubt the status quo of the property is that there are no permanent structures. Neither the Plaintiff nor the defendant should carry on any construction of a permanent nature or interfere with the property by leasing it out or disposing it off until the hearing and determination of the suit herein.

8. On the second application by the defendant, it is clear that the defendant wants to have the injunction orders discharged so that he can proceed with construction of residential apartments for which he has obtained approvals from the relevant authorities. This cannot be allowed for to do so will be tantamount to determining the dispute without affording all the parties an opportunity to be heard. The plaintiff’s suit is not so hopeless that no amount of amendment can breath any life into it. In view of the orders of maintenance of **status quo**, I find that the defendant’s application of 22nd February 2016 cannot be allowed. The same is dismissed. Costs of the two applications shall be costs in the cause.

It is so ordered.

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

E.O .OBAGA

JUDGE

In the absence of parties who had been notified of the date and time of delivery of ruling.

Court Assistant: Hilda

E.O.OBAGA

JUDGE