



REPUBLIC OF KENYA
IN THE ENVEIROMENT AND LAND COURT
AT MILIMANI
ELC NO. 307 OF 2016

PLANET FOODS LIMITED.....1ST PLAINTIFF
ABDALLA ALI TAIB.....2ND PLAINTIFF
TAIB ALI TAIB.....3RD PLAINTIFF
MOHAMED ALI TAIB.....4TH PLAINTIFF

=VERSUS=

JAMES DAVID ABILA.....1ST DEFENDANT
JAPHETH AWINO AGUMBI.....2ND DEFENDANT
AMENKHIENAN ONO PETER.....3RD DEFENDANT
ADEWUMI OLUWAMAYOWA.....4TH DEFENDANT
BAPTUNDE JOSEPH5TH DEFENDANT
MOSES KANIARU KAMAU (All sued in both their personal capacities)

And also in their capacities as the Trustees and representatives of

CHRIST THE REDEEMERS MINISTRY.....6TH DEFENDANT
STEPHEN O AMBANI7TH DEFENDANT
PETER WAMBUGU8TH DEFENDANT
JANE NJERI GICHARA.....9TH DEFENDANT

RULING

INTRODUCTION.

1. The second, third and fourth applicants are directors and shareholders of the first applicant company. The first, second third, fourth and fifth Respondents have been sued both in their personal capacities and also in their capacities as trustees and officials of Christ The Redeemer's Ministry which is the sixth Respondent. The seventh Respondent is a licensed surveyor. The eighth and ninth Respondents have been sued as directors of a company bearing the same name as that of the first applicant. The company with the same name as the first applicant is the one which caused subdivisions of **LR No. 209/20529** into three portions namely **209/20529/1** ,**209/20529/2** and **209/20529/3**.

2. The eighth and ninth Respondents in their capacity of a company bearing the same name as the first applicant have sold **LR No. 209/20529/3** to the officials of Christ The Redeemer's Ministry the sixth Respondent herein. The applicants filed a Notice of Motion dated 30th March 2016, in which they sought six prayers. Prayer (1) has since been spent. Prayer (5) was granted on 20/4/2016. The Prayers which are for determination are prayers (2),(3) (4) and (6).

APPLICANTS CONTENTION

3. The applicants are seeking injunctive orders against the first to ninth Respondents. They are also seeking orders directed at the Inspector General Police and the OCPD and OCS Embakassi Police Station to enforce compliance of the Court orders. They are also seeking orders directed against the Chief Land Registrar not to register any dealing with respect to the property in issue.

4. The applicants contend that the first applicant is the registered owner of LR No. 209/20529. In or around 2015 they came to learn that some persons were interfering with the property belonging to the first applicant. Further investigations showed that the property had been sub-divided into three portions one of which had been sold to the trustees and officials of sixth Respondent. Investigations also showed that the persons behind the sale and subdivisions were the directors of a parallel Company bearing the same name as that of the first applicant whose directors are the eighth and ninth Respondents. The sub-divisions had been carried out by the seventh Respondent who is a licensed surveyor.

5. The applicants contend that they have never sold their property to any person. That the property was subdivided using forged documents. The applicants noticed that documents in the lands office could not be traced. Their efforts to get assistance from the Land Registry has not elicited any response. They are now apprehensive that if injunction orders are not issued, the property of the first applicant will be taken away by third parties and this will cause irreparable loss.

First to sixth Respondents contention.

6. The sixth Respondent through its officials purchased a portion of the disputed land known as LR No. 209/20529/3 from the eighth Respondent who is a director of Planet Foods Limited. That they did due diligence and have since paid all the purchase price and the purchased portion has been transferred to them. That plans for building have been approved and that they are innocent purchasers for value who should not be dragged into this suit.

EIGHT AND NINTH RESPONDENTS CONTENTION

7. The eight Respondent contends that he is a retired civil servant who bought the suitland from its original allottee. He had the suit land registered in the name of his company Planet Foods Limited which he co-owns with his wife who is the ninth Respondent. That he has been unable to get registration documents of his company from the Registrar of Companies at Sheria House. He denies that his company was involved in any wrong doing. That he stopped any further dealings with the suit property in good faith after he was served with the suit papers herein.

ANALYSIS

8. I have gone through the documents presented by the applicants and the Respondents. There is no doubt that the suit property has been sub divided into three portions. One of the portions has since been sold to

the Sixth Respondent. The title is held by its trustees. The eighth and ninth Respondents contend that the property belongs to them and was owned by their company Planet Foods Limited.

9. This is an application for injunction to preserve the suit property known as LR No. 209/20529 which has since been subdivided into three portions. This being an injunction application, the applicants are expected to demonstrate that they have a prima facie case with probability of success. A prima facie was described in the case of **Mr Rao –Vs- First American Bank of Kenya Limited and 2 others (2003) KLR 125** as follows:-

“a prima facie case in a civil application includes but is not confined to a “genuine and arguable case” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”

10. In the instant case, the applicants have provided documents which show that the property in dispute is registered in the name of the first applicant. The documents of registration from the companies’ registry at Sheria House in respect of the first applicant have been availed. Though the eighth and ninth Respondent too claim that they have a company bearing the same name, they cannot produce any documents from the Companies Registry to confirm that the company exists. The entity whose documents cannot be availed is the one which has caused the sub division of the disputed property. One of the subdivided portions has been sold to the sixth Respondent. The Respondent has not started developing the property. This is a clear case where an injunction should be granted to preserve the property.

CONCLUSION.

11. If an injunction was to be declined and the property is developed by third parties, the amount of loss which the applicants might suffer may not be compensated in damages. I therefore find that the applicant’s application is well founded. I allow the same in terms of prayers two (2), four (4) and six (6).

It is so ordered.

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

E.O.OBAGA

JUDGE

In the Presence of :-

Mr Muriuki for 1st to 6th defendants

Mr Wachira for Plaintiff

Mr K`uria for 8th and 9th defendant

Court Assistant: Hilda

E .O. OBAGA

JUDGE