

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CASE NO. 90 OF 2017

MILAN PRABHULAL HARIA.....PLAINTIFF

VERSUS

JITESH PRABHULAL HARIA.....1ST DEFENDANT

CHIEF LANDS REGISTRAR.....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

RULING

The Plaintiff filed suit seeking a declaration that the transfer of half undivided share in L.R. No. 209/3428 (I.R. No. 8235) (“the Suit Property”) to the 1st Defendant was effected illegally. He also seeks a permanent injunction against the Defendant.

The Plaintiff filed a notice of motion dated 3/2/2017 seeking a temporary injunction to restrain the 1st Defendant from selling, charging, alienating or disposing of the Suit Property pending the hearing and determination of this suit. The Plaintiff also seeks a mandatory injunction directing that the rent collected from Smart Autos Ltd who are the tenants in the Suit Property either be shared equally between the Plaintiff and the 1st Defendant or that it be deposited in a joint account in the names of counsels and advocates of both parties.

The application is supported by the Plaintiff’s affidavit. The Plaintiff states that he bought the Suit Property with the 1st Defendant, who is his brother, on or about October, 1991. He further states that they took a loan from Bullion Finance Limited of Kshs. 1.5 Million to pay part of the purchase price and which they later paid off. The Plaintiff avers that initially he and the 1st Defendant resided on the Suit Property but due to constant differences and family squabbles he decided to relocate to Kisumu and to operate his own business. The 1st Defendant collected the title from the bank after the discharge of the charge. The Plaintiff states that he learnt in October, 2014 that the 1st Defendant had transferred the Plaintiff’s half share in the Suit Property to himself on the basis that it was a gift. The Plaintiff reported the matter to the police and a forensic document examiner was tasked to carry investigations on the allegation that the Plaintiff’s signature on the transfer was forged.

The 1st Defendant in his replying affidavit filed in court on 13/4/2017 denies the Plaintiff’s claim and avers that the dispute was taken before the National Land Commission (NLC). The 1st Defendant states that their father appeared before NLC and objected to the hearing of the dispute and instead proposed that it could be settled amicably since it was a family matter. The 1st Defendant contends that the Suit Property previously belonged to their father while the Plaintiff maintains that it was acquired by the two of them.

The 1st Defendant states in his affidavit that a proposed settlement was reached before the NLC based on their father’s proposal. The 1st Defendant annexed a copy of that agreement which proposes to have the Suit Property disposed of at market rate and to have the proceeds divided between the Plaintiff, the 1st Defendant, their father and sister. Both their father and 1st Defendant have executed that draft consent. The 1st Defendant urges the court to stay this suit until NLC concludes the matter it is handling.

In his further affidavit, the Plaintiff denies that any agreement was reached on any issue before the NLC. He further states that the 1st Defendant has leased the Suit Property to a Car Bazaar and that he collects rent from it on a monthly basis.

This court has jurisdiction to deal with this matter under the Environment and Land Court Act. The issue the court has to determine in this application is whether the Plaintiff has made out a case for the grant of the orders he seeks. The court finds that the Plaintiff has a prima facie case against the 1st Defendant with a probability of success. The court grants prayer 3 of the application dated 7/2/2017. The rent derived from the Suit Property is to be deposited in a joint interest earning account to be opened by the advocates for the Plaintiff and the 1st Defendant. The Plaintiff is awarded the costs of this application.

Dated and delivered at Nairobi this 21st day of September 2017.

K. BOR

JUDGE

In the presence of: -

No appearance for the Plaintiff

No appearance for the Defendant

Mr. V. Owuor- Court Assistant