



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 111 OF 2013

NDEFFO CO. LTD.....PLAINTIFF

VERSUS

JAMES KAMAU KINYANJUI & 148 OTHERS.....DEFENDANTS

RULING

(Application seeking to restrict dealings in land under dispute; application allowed).

1. The application before me is that dated 19 September 2016 filed by the plaintiff. It is an application seeking orders that pending the hearing and determination of this suit, there be an order prohibiting any dealings with the land parcel Bahati/Kabatini Block 1/3798 and 3799, or with any of its subsequent subdivisions. The grounds upon which the application is based inter alia include the reason that the applicant has sought cancellation of the said title deeds in this suit and that the defendants are likely to deal with the same.
2. The suit itself was commenced by way of a plaint filed on 24 September 2010. It is pleaded that the plaintiff is the owner of the land parcel Bahati/Kabatini Block 1/3798 and 3799, and that the defendants jointly and severally, unlawfully caused it to be subdivided, giving rise to 205 parcels of land. The said parcels of land comprise the suit properties herein and are registered in the name of the defendants. In the suit, the plaintiff wishes to have nullified the said title deeds. Some of the defendants filed defence and averred that they lawfully acquired the suit properties.
3. I have considered the application alongside the submissions of Mr. Waiganjo for the applicant, and Mr. Olonyi, Mr. Opondo, and Mr. Maina, for the respondents who opposed the motion.
4. I really do not see any reason why I should decline the application. There is litigation over the various subdivisions which are now registered in the name of the defendants, and if the defendants proceed to deal with the same, then the very subject matter of the case may be lost. There was contention by Mr. Olonyi that the suit itself is a non-starter, because no company resolution is annexed, and the suit should therefore be struck out. He also submitted that some of the parties have sold their properties. I did not see any evidence of change of proprietorship, and in my view, the issue of company resolution is not an issue best addressed within the context of this application. Any defendant wishing to have the suit struck out can apply for the said order, and I will deal with the said application if filed. It was also argued that the titles are not annexed, but it was not disputed by any of the respondents that they are the owners of the said properties. In fact, the position of the defendants, is that they are the lawful owners of the said properties. An issue of possession was also raised, but I note that the issue of possession is not in issue in this application. What the applicant wants is only to preserve the titles pending hearing of the suit and in fact counsel for the applicant did state that his client does not wish to affect the possession of the properties.
5. It is for the above reasons that I find merit in this application and do allow it. I do order the defendants not to enter into any dealings in respect of the properties in issue, which are well elaborated in paragraph 4 of the plaint, until this case is heard and determined. I also issue an order of inhibition restricting the registration of any dealings in the register of the said parcels of land until this case is finalized.
6. On costs, the same shall be in the cause.
7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 16th day of November 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of : -

Ms. B.Wangari holding brief for Mr. Waiganjo for the plaintiff/applicant.

Mr. Maina holding brief for Mr. Kimatta for 35th and 72nd defendants and also holding brief for Mr. Olonyi for the defendants No.1,15,27,37,45,60,64,106,111,119,122,142 and 144.

Mr. Opondo present for the 8th and 36th defendants

Other parties: Absent.

Court Assistant: Carlton Toroitich.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU