



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 1506 OF 2016

MOSES NGENE MUNYIRI.....PLAINTIFF

VERSUS

PETER NGUKU KUNGU.....DEFENDANT

RULING

BACKGROUND

1. The respondent is son William Kungu Ndwaru (deceased) who was the registered owner of LR No.Darogetti/Riruta/10. Upon the demise of the deceased, the respondent's mother Florence Wambui Kungu was appointed as administratrix of the estate of the deceased. The respondent's mother has since passed on. During the succession process, the portions which the respondent was to have had been identified as "A" and "C" as per the subdivision map prepared by a land surveyor. Based on this subdivision map, the respondent's mother entered into an agreement with the applicant for sale of a portion of land measuring 52.3 metres by 50 metres on portion "A" which fronted Ngong Road. The beneficiary of the sale proceeds was the respondent as that portion had been earmarked for him.

APPLICANTS APPLICATION

2. The applicant filed a notice of motion dated 1st December 2016 in which he sought the following orders:-

1) Spent

2) Spent

3) That a temporary injunction do issue restraining the Defendant/Respondent by himself, his servants, employees, workmen, agents, heirs ,personal representatives or otherwise howsoever from selling ,leasing, charging, pledging, offering the title thereof as lien or any other form of security, trespassing, encroaching, evicting, demolishing, conveyance, transfer, arbitrary registration or in any other manner interfering with plaintiff/Applicants peaceful occupation of the portion of land on property known as LR No.Darogetti/Riruta/10, Nairobi pending the hearing and determination of this suit.

4) That Officer Commanding Station Kilimani Police Station to provide assistance to ensure compliance of Orders 2 and 3 above.

5) That the costs of this Application be borne by the Defendant/ Respondents.

3. The applicant contends that after the purchase of that portion measuring 52.3 metres by 50 metres (suit property), he was put in possession and has since put up structures which have been leased out to third parties who are carrying on business there. The agreed purchase price was Kshs. 3,500,000/= out of which he has paid the respondent Kshs.2,500,000/= and the balance is 1,000,000/=.

4. The applicant now contends that the respondent has since purported to terminate the agreement. The applicant states that he is ready and willing to pay the balance of the purchase price.

RESPONDENT'S CONTENTION.

5. The respondent has opposed the applicant's application based on a replying affidavit sworn on 15th April 2017 and a further affidavit sworn on 26th April 2017. The respondent contends that the agreement which is the subject of this suit was entered through coercion and that he has since terminated it in accordance with clause 7 of the same. That the applicant intends to injunct the entire parcel which is about 7 acres. That he is willing to have the contested portion preserved by the court through a court appointed receiver who should also receive proceeds from the same and preserve until determination of this suit.

6. The respondent disputes some payment of Kshs.200,000/= which he says is not on his records and that he is ready to refund the money so far received with interest as he has already terminated the agreement. The respondent further contends that the portion purchased was 17 metres by 50 metres and not 52.3 metres by 50 metres as alleged by the applicant.

ANALYSIS.

7. I have carefully gone through the documents in support of the applicant's application as well as the opposition to the application by the respondent. The only issue for determination in this application is whether the applicant has disclosed a prima facie case to warrant grant of an injunction. There is no contention that the applicant purchased the suit property which was part of LR No.Dagoretti/Riruta/10. The suit property was clearly identified in the agreement. The suit property had been earmarked for the respondent who was to be the beneficiary of the proceeds of the sale. The respondent has received a substantial part of the purchase price. The applicant is ready and willing to clear the balance of the purchase price.

8. The respondent does not deny that there was such agreement. He also does not deny that he has received a substantial amount. He is merely claiming that he has terminated the agreement. He is also claiming that the portion the applicant bought was measuring 17 metres by 50 metres and not 52.3 metres by 50 metres. The agreement is clear that the portion was 52.3 metres by 50 metres which fronts Ngong road. All monies received by the respondent were acknowledged. If the applicant is doubting whether he received kshs.200,000/= that is a matter which will come out clearly during the hearing.

9. The applicant has demonstrated that he has a prima facie case with probability of success, He purchased an identifiable portion. He has put up structures which he has let out to third parties. If he loses that property, he might not get another similar property with the same characteristics. Even the balance of convenience tilts in favour of the applicant in that he is the one in possession and it is the respondent and his other family members who put him in possession.

CONCLUSION.

10. Having found that the applicant has met the threshold for grant of an injunction, I grant a temporary injunction restraining the respondent by himself, his servants, employees, workmen, agents, heirs, personal representatives or otherwise howsoever from selling, leasing, charging, trespassing, encroaching, evicting, demolishing, conveyance, transfer, registration or in any other manner interfering with the plaintiffs' peaceful occupation of a portion measuring 52.3 metres by 50 metres comprised in LR No.

Dagoretti/Riruta/10 Nairobi pending hearing and determination of this suit. The respondent to pay costs of this application.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **20th day** of **December 2017**.

E.O.OBAGA

JUDGE

In the presence of;-

Mr Ndirangu for Mr Githui for Plaintiff

Defendant in person

Court Assistant: Hilda

E.O.OBAGA

JUDGE