



IN THE REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 894 OF 2014

FRANCIS THANDE JAMES KIARIE.....PLAINTIFF

=VERSUS=

JOHN KARANJA KAHERA.....1ST DEFENDANT

NELLIE NGONYO MWAURA.....2ND DEFENDANT

RULING

BACKGROUND.

1. The Plaintiff/Respondent herein filed an application dated 3rd July 2014 seeking an order of injunction against the defendants/applicants. The application was fully heard and a ruling delivered on 7th October 2016. Lady Justice Gacheru did not allow the application but owing to the fact that the parties in the suit were related and since there was need to preserve the subject matter of the suit, she gave orders in the following terms:-

1. A status quo order is hereby entered to the effect that none of the parties shall interfere with the others possession of the property. There shall be no further construction thereon until the suit is heard and determined or until further orders of the court.

2. Costs of the application shall be in the cause.

APPLICANTS' APPLICATION

2. On 10th November 2017, the defendants/applicants filed a notice of motion dated 9th November 2017 in which they sought order of the court including the particulars of the suit property in the status quo order granted on 7th October 2016. They stated that they had information that the plaintiff/respondent intended to take a loan and offer the suit property as security. That in their bid to register a restriction, they were informed by the Land Registrar that the restriction could not be registered as the particulars of the property were not contained in the order.

RESPONDENT'S CONTENTION.

3. The respondent has opposed the application by the applicants based on a replying affidavit sworn on 23rd November 2017 in which he contends that this application is a back door attempt by the applicant to change the ruling of the court after inordinate delay. That it is the respondent who had made the application and that the court in its wisdom issued clear orders which each party is obeying and that this court is ***functus officio.***

4. The respondent also contends that the applicants are seeking review of the Ruling on ground of error apparent on the record when there is no such error. That the application is only meant to delay the finalization of the case.

ANALYSIS

5. I have carefully considered the applicant's application as well as the opposition to the same by the respondent. I have seen an application for registration of a restriction by the applicants. This application was rejected on the ground that the particulars of the property were not indicated in the order which had been extracted. What is not in contention is the identity of the property which was the subject matter of the ruling. The parties herein were litigating over **LR. No. Dagoreti/Kangemi/307** which is registered in the respondent's name.

6. When Lady Justice Gacheru gave orders that parties maintain status quo, she had no any other property in mind other than **LR. No. Dagoreti/ Kangemi/307**. The intention of giving the order was to preserve the property until hearing and determination of the suit or until further orders. The order of Lady Justice Gacheru gave parties a leeway to apply to court. The applicants have taken up that liberty to ask the court to indicate the property details in the order. The basis upon which this application is made is that there is information that the respondent intends to take a loan and offer the property as security. If this were to happen it will be prejudicial to the applicants which will be against the intended purpose of the order.

7. The applicants did not require to give evidence of the respondent's intention. The respondent has stated in his replying affidavit that he will observe the orders of the court. If that be the case, then there will be no prejudice he will suffer if a restriction is registered against the title. The order referred only to the property without describing which property. The court has inherent power to make such orders as may be necessary for the ends of justice to prevent abuse of the process of the court.

8. If any party to this suit were to disobey the order of status quo, it would be hard to bring any contempt proceedings against such party because the order is not clear as to which property is being protected. To demonstrate the importance of clarity of orders of maintenance of status quo, I will give the case of **Ochino and another Vs Okombo and 4 Others, Civil Appeal No. 36 of 1989**, where the High Court had jailed the appellants for contempt of court for disobeying orders of maintenance of status quo. They filed an appeal to the Court of Appeal which held that a court will punish as a contempt a breach of injunction if it is satisfied that the terms of the injunction are clear and unambiguous.

CONCLUSION

9. It is clear that the Judge omitted to describe the property in the order. Such mistakes can be corrected on the court's own motion or on application of any party. In any case the ruling of the court gave leeway to parties to apply for further order. I therefore find that this application is not intended to delay the finalization of this case and will not prejudice the respondent unless his intention is to breach the order. In the final analysis, I find that the applicant's application has merits. I allow it with the result that order No.1 in the Ruling of 7th October 2016 is amended by deleting the full stop immediately after property and adding the following;- "**Known as LR No. Dagoretti/ Kangemi/307**".

It is so ordered.

Dated, Signed and delivered at Nairobi on this 19th day of December 2017.

E.O.OBAGA

JUDGE

In the presence of;-

Mr Njogu for Plaintiff/Respondent

Mr Shivachi for M/s Opondo for applicant

Court Assistant: Hilda

E.O.OBAGA

JUDGE