



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI

ELC. CASE NO. 65 OF 2017

JOEL MUNYOKI MUNENE.....PLAINTIFF

-VERSUS-

AGNES KAGURE KARIUKI.....1ST DEFENDANT

THE CITY COUNTY OF NAIROBI.....2ND DEFENDANT

THE CHIEF LANDS REGISTRAR.....3RD DEFENDANT

RULING

In the application dated 31/1/2017, the Plaintiff seeks a temporary injunction to restrain the 1st Defendant or her agents from entering, occupying, trespassing, selling or in any other way interfering with the property known Nairobi Block 83/1903 (“the Suit Property”) pending hearing and determination of this suit.

He claims to be the legal owner of the Suit Property having bought it from one Erastus Nyaga Timothy; who bought it from the original owner known as Silas Mugo Kithenji. He claims the 2nd Defendant issued him an assignment dated 31/5/2007 giving effect to the transfer to him. When he attempted to obtain a certificate of lease over the Suit Property, his application was rejected on the ground that there has been double allocation of the plot in question. The Plaintiff claims to have been paying rent and rates charged on the Suit Property. He also states that he has been enjoying quiet and peaceful occupation of the suit land from 31/5/2007 and is apprehensive that the 1st Defendant may transfer the Suit Property to unsuspecting third parties or cause it be encumbered to his detriment. He swore the affidavit in support of the application and annexed copies of the letter of allotment dated 15/12/1993, beacon certificate, the assignment and lease in respect of Nairobi Block 83/1903.

The 1st Defendant swore a replying affidavit on 31/7/2017 in opposition to the application for injunction. She claims that she bought plot number A28-Umoja Innercore Sector III from Joseph Chege Muturi on 15/9/2016. This is the plot she claims was later registered as Nairobi Block 83/1903. She was issued a certificate of lease over this parcel of land. She claims to be in possession of the Suit Property and urges the court to dismiss the Plaintiff’s application.

Karisa Iha, the Director of Legal Affairs at the Nairobi City County Government swore the replying affidavit on 6/4/2017 on behalf of the 2nd Defendant. He swears that the Plaintiff is the registered owner according to the records held by the 2nd Defendant.

The Court has looked at the lease annexed by the 1st Defendant to her replying affidavit which is shown to have been executed by the mayor and town clerk in November, 2016. By that date the City Council of Nairobi had ceased to exist by operation of law after the county Governments came into being following the promulgation of the 2010 Constitution. The court notes that the lease was signed by Lydia Mbogo Kwamboka and not the 1st Defendant.

The question as to how the 1st Defendant acquired the Suit Property will have to be determined at the full trial.

The court is satisfied that the Plaintiff has demonstrated that he has a *prima facie* case against the 1st Defendant and grants the orders sought in paragraphs (c) and (d) of the application dated 31/1/2017. The court declines to grant prayers (e) and (f) as they cannot be granted before the suit is heard. The Plaintiff will have the costs of this application.

Dated and delivered at Nairobi this 5th day of December 2017.

K. BOR

JUDGE

In the presence of: -

Mr. Keya for the Plaintiff

No appearance for the Defendant

Mr. V. Owuor- Court Assistant