



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC. NO.133 OF 2013

PETER GICHIA NYANJUI.....PLAINTIFF

VERSUS

SIMON KIBE MURIITHI.....1ST DEFENDANT

J. MAKAU LAND REGISTRAR.....2ND DEFENDANT

MUNICIPAL COUNCIL OF THIKA.....3RD DEFENDANT

ATTORNEY GENERAL4TH DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 9th January 2015 brought **under Order 51 of the Civil Procedure Rules, 2010 and Section 3A of the Civil Procedure Act** seeking for orders that the honourable court be pleased to restrain the fourth defendant from denying the plaintiff/applicant access and dealings on the parcel of land known as Thika Municipality/Block 1/366 (hereinafter referred to as the “suit property”) pending the hearing and determination of this suit and that the court be pleased to order the fourth defendant to remove the restriction registered on 10th February 2014 vide letter reference AG/CPT/MCS/2/14 prohibiting any dealings on the suit property.

This application is premised on the grounds stated on the face of the application and the Supporting Affidavit of the plaintiff. He stated that he was the proprietor of the suit property. He urged that on 2nd January 2015 when he conducted a search he found that the 4th defendant had placed a restriction on 10th February 2014 preventing any dealings on the suit property. He also alleged that he had been denied access and use of his land without any justification and action that is causing him irreparable loss, damage and injustice.

This application is not opposed. There is evidence that the defendants were served with the application.

To canvass this application, the applicant filed his written submissions which the court has taken into consideration.

The point for determination in this application is whether the applicant has satisfied the conditions set out

in **Giella vs. Cassman Brown Ltd [1973] EA**. Where the court held that for an interlocutory injunction to issue the court must be satisfied.

- a. That the applicant has a prima facie case with a probability of success.
- b. That unless the order sought is granted the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.
- c. If in doubt, the court to decide the application on the balance of convenience.

This court had in a ruling dated 6th December granted the applicant an injunction restraining the defendants from interfering and/or transferring the suit property pending the hearing and determination of this suit. However the 4th defendant lodges a restriction on the title of the suit property stating that “*No dealing vide letter of AG/CPT/MCS/2/14*”

Section 76 of the Land Registration Act gives the Registrar power to put a restriction on any particular land or lease. However, the said section states that the registrar has to direct that inquiries be made and notices to be served and hearing such a person before making an Order for Restriction. There was no evidence that the Registrar made any inquiries neither did he issue notices nor gave a hearing to any persons with interest over the suit property. The Registrar only relied on the letter from the 4th defendant thus he did not follow the right procedure in placing the restriction as the applicant was not heard.

Section 76(2) provides that a restriction may be expressed to endure:-

- a. *For a particular period.*
- b. *Until the occurrence of a particular event or*
- c. *Until the making of a further order.*

In the instant case, there is no indication of when the restriction was to endure. A restriction does not endure for eternity. **Section 78(2)** gives the Court power to order removal or vacation of the restriction on a parcel of land.

The Court finds that in the instant case, proper procedure was not followed in placing the restriction on the parcel of land as provided by **section 76 of the Land Registration Act 2012**. The Restriction was pegged on a letter whose contents were not relayed to the applicant and there was no indication of how long the restriction would endure. It is therefore my opinion that the restriction was not justifiable. Since there was an injunction already issued by the court restraining any dealings on the land that injunction will secure the interests of all the parties to the suit.

I therefore allow the Application dated 9th January 2015 in terms of prayer 3. Costs are in the cause.

DELIVERED AND SIGNED AT NAIROBI THIS 29TH DAY OF JANUARY 2016.

MARY M. GITUMBI

JUDGE