



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 289 OF 2016

JARED OMWOYO NYAKWARAPLAINTIFF

VERSUS

ALICE KINGORIDEFENDANT

RULING

(Application for injunction; plaintiff having title to the land; defendant claiming that the title is fraudulent; property handed over to an agent to manage pending hearing and determination of the case)

1. This suit was commenced by way of plaint filed on 29 July 2016. The case of the plaintiff is that he is the registered proprietor of the land parcel Nakuru Municipality Block 15/103 and has constructed a house wherein he resides. He has pleaded that he bought the land in the year 2013 and has remained owner to date. He has contended that the defendant has been disturbing him on the land thus denying him the enjoyment of his property. In this case, the plaintiff wants the defendant permanently restrained from the suit land, costs and interest of the case.

2. Together with the plaint, the plaintiff filed an application for injunction, under the provisions of Order 40 Rules 1, 2 and 4 of the Civil Procedure Rules. In the application, the plaintiff has asked for orders that the defendant be restrained from the suit property pending hearing and determination of this suit. To his supporting affidavit, the plaintiff annexed a sale agreement dated 15 June 2013 which shows that he purchased the property from one John Warui Mathenge for the sum of Kshs. 8, 500,000/=. He has also annexed a copy of the Certificate for Lease, in his name, showing that he became registered as proprietor on 23 August 2013, and a search certificate which gives his name as proprietor.

3. In her replying affidavit, the defendant claimed that the suit property has always belonged to her father, James Wanjohi Kingori who died on 19 June 2013. He left behind the defendant, and three other sisters. The defendant deposed that they were raised on the suit property and that her father was resident in it until the year 2000 when he left to live in a farm in Gilgil. The defendant continued residing on the land until the year 2007 when she got married. She then moved out to live in her matrimonial house in Ngata area. When she left, the property was handed over to Metrocosmo Limited, a firm of property agents, to rent out. It is said that Metrocosmo let out the premises from the year 2007 until the year 2015 when the last tenant moved out. She annexed a Management Agreement and a letter from Metrocosmo Ltd to show this. She got a call from a neighbor who informed her that there were security guards posted on the property by unknown persons. She then went to the premises to confirm and indeed found the guards. She proceeded to obtain a copy of the register of the property which showed that the property was transferred to one John Warui Mathenge and later to the plaintiff under circumstances she deems to be suspicious.

She pointed at a restriction placed by the Land Registrar, which suspects fraud.

4. There was also a preliminary objection filed contending that the suit is misconceived since the defendant does not hold any letters of administration for the estate of the late Kingori. I directed that the preliminary objection be argued within the application for injunction. Both Mr. Biko for the applicant and Ms. Nancy Njoroge for the respondent made submissions in support of their clients' respective positions. Ms. Njoroge also advised that the defendant has now obtained a grant of letters of administration ad litem issued on 19 August 2016 and tendered a copy of the same. I believe this sorts out the preliminary objection.

5. After hearing the submissions of counsels, I thought it fit to visit the suit property and we did proceed to the site. I observed a three bedroomed bungalow, which appeared to be in a dilapidated state. There was no person occupying the same but there was a security guard posted.

6. I have considered the application. The plaintiff of course asserts that he has title over the property. It is his position that he purchased the same from the previous registered owner and that he is therefore a bona fide purchaser for value. The position of the defendant is that at no time did the property ever change hands from their father, the late Mr. Kingori.

7. I have perused the register. It shows that the property was initially registered in the name of the deceased, and later to John Warui Mathenge on 12 May 2004. The plaintiff thereafter got registered as owner on 23 August 2013. It is difficult for me at this stage of the proceedings, and indeed it may not be wise, for me to make any determinate findings on whether or not the plaintiff's title is a good title or a bad title. I think that is best left to be decided at the trial given the circumstances of this case.

8. The application before me is that for injunction. In an application of this nature, the court is being asked to do no more than give a direction on how the subject matter of the suit ought to be preserved. In my view, I think it is best that the property be allowed to be let out to a paying tenant and there be no dealings over the property until the final conclusion of this case. The plaintiff in his pleadings of course claimed to be resident on the suit property but the site visit revealed that the property is not occupied at all. I have seen that at some point the property was under the agency of Metrocosmo Ltd. Since they are familiar with the property, I do appoint them as managing agents pending the conclusion of this case, the appointment to take effect immediately. I direct them to shop for a tenant and rent out the premises. They are free to undertake any requisite repairs which may be deducted from the rent. The rent collected, upon deduction of management fees and expenses reasonably required to maintain the premises, will be deposited in court every month and an account given every 6 months until the case herein is concluded. To me, that is the best way of preserving the premises and I believe that no party will suffer any prejudice.

9. The property also needs to be safeguarded and an order of inhibition, inhibiting the registration of any dealings in the register of the suit property is hereby issued.

10. The costs of this application shall be costs in the cause.

11. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 18th day of October 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of : -

Mr. Biko for the plaintiff/applicant

Ms. Nancy Njoroge for defendant/respondent.

Court Assistant: Janet

MUNYAO SILA

JUDGE

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