



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CIVIL CASE NO. 33 OF 2015

GAMII PROPERTIES LIMITED.....PLAINTIFF

VERSUS

MONDO PROPERTIES LIMITED.....DEFENDANT

RULING

1. Professor Adrian Zukerman in his book **Zukerman on Civil Procedure: Principles of Practice** (2nd Ed., Sweet & Maxwell 2006) at page 533 paragraph 13.16 writes that a court has a wide ranging jurisdiction to stay proceedings. It is that facility and jurisdiction of bringing proceedings to a halt whilst keeping open the possibility of their revival at a later stage that the Defendant herein sought to invite through the application filed and dated 9th March, 2015.
2. By that application the Defendant sought to stay proceedings in this suit pending hearing and determination of High Court Civil Suit No. 18 of 2009. The foundation of the Defendant's application was that the subject matter in this suit was the same as that in the previous suit. Both involved issues touching and concerning the suit property namely Land Reference No. 1870/111/208 (IR No. 62259). In the previous suit too, the Defendant contended, the sale and disposal of the suit property is challenged and if such challenge is successful, the same will have a bearing on the instant suit. The Plaintiff herein would hear none of that and vehemently opposed the stay of proceedings and of the suit or the application.
3. Having heard both parties make their oral submissions on 17th March, 2015, I was not convinced that the Defendant's application was merited and I proceeded to immediately dismiss the application with costs to the Plaintiff whilst reserving my reasons for such dismissal. My conviction still stands. The application was not well founded.
4. Briefly, Mr. Mogere advocating for the Defendant submitted that the suit property was irregularly sold to the Plaintiff as no valid statutory notice had been served upon the Defendant by the chargee. To Mr. Mogere, the statutory power of sale had never arisen even as the property was being sold. He eloquently submitted that the court has powers to set aside such sales and indeed the likelihood of the sale of the suit property to the Plaintiff being set aside was high and indeed there. He wrapped it up by concluding that **Section 99** of the **Land Act, 2012** (as to protection of purchasers of charged property) was not absolute. Mr. Mogere availed various authorities to stress this point.

5. Mr. Opiyo for the Plaintiff was brief in his response. Stripped to detail, Mr. Opiyo's submissions were to the effect that the Plaintiff is currently the registered proprietor entitled to seek the enforcement of any ordinary proprietor's rights including obtaining possession as it now sought through the instant suit. To Mr. Opiyo, the equity of redemption tagged to the Defendant was extinguished the moment the Plaintiff was registered as a proprietor of the suit property.
6. From the outset, it was clear to me and it still is that the instant dispute before the court is not a controversy about the legality or otherwise of the sale of the suit property to the Plaintiff. That is the subject of the proceedings in High Court Civil suit No. 18 of 2009. The issues as to whether the sale can be set aside, whether the provisions of the Section 99 of the Land Act are absolute whether damages would be adequate recompense to the Defendant can and will only be determined in the said suit; HCCC No. 18 of 2009. Before this court was a simple question of whether it would be a proper case management strategy to stay the instant suit to await the determination of the previously filed suit. I will not arrogate myself the duty or burden of determining the issues before the commercial court in HCCC No. 18 of 2009 even by way of preliminary observations.
7. It was noted and admitted by Mr. Mogere that the Plaintiff herein is not a party to the proceedings in the previously instituted suit. Ordinarily, the Plaintiff's suit would therefore not come under the ambit of Section 6 of the Civil Procedure Act. Evidently, none of the parties litigating in the previously instituted suit can also be said to be litigating on behalf of the Plaintiff herein.
8. It would in the circumstances occasion the Plaintiff unnecessary prejudice if the instant suit is stayed. The Plaintiff has no control over the proceedings in the previously instituted suit. The commercial court knows not about the Plaintiff or any reliefs it may be entitled to. The Defendant herein did not even suggest there is a remote chance of seeking to enjoin the Plaintiff to the proceedings in the previous suit. Proportionate justice would consequently demand that once a party is before the court his complaint is adjudicated upon unless there is an alternate forum where the same may be adjudicated.
9. I would agree with Mr. Mogere that the jurisdiction to order stay of proceedings is not to be confined to instances expressly mentioned by statute or rules. The Jurisdiction must be exercised where the court is of the view that there is abuse of the process of court. It can also be exercised where it is deemed right and just to stay the proceeding like where a party fails to comply with court directions in relation to ordinary case management.
10. In my view, the instant suit does no amount to an abuse of any process. I did not and still do not believe that it would be right and just to stay the proceedings in this suit. The prejudice to be occasioned to the Plaintiff by such stay far outweighs the hardship the Defendant would suffer by the continued prosecution of this suit.
11. I was inclined to and did summarily dismiss the application and for the above stated reasons the inclination and dismissal still stands. The costs of the dismissed application as earlier ordered are to the Plaintiff.

Dated, signed and delivered at Nairobi this 23rd day of March, 2015.

J. L. ONGUTO

JUDGE

In the presence of:-

..... for the Plaintiff/Applicant

..... for the Defendants/Respondent