



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 163 OF 2014

LOIS WAIRIMU MAGUA.....PLAINTIFF

VERSUS

HENRY KETER CHEPSENGENY1ST DEFENDANT

RUKIMA ESTATE LTD.....2ND DEFENDANT

NAKURU DISTRICT LAND REGISTRAR.3RD DEFENDANT

ATTORNEY GENERAL4TH DEFENDANT

MAMIS MOTOR WORLD LTD5TH DEFENDANT

EQUITY BANK LTD6TH DEFENDANT

RULING

(Application for injunction; principles to be applied; plaintiff demonstrating that she has title to land; second title apparently issued to defendants; prima facie case established; need to preserve property pending hearing of suit; application allowed)

The application before me is that dated 9 June 2014 brought under the provisions of Order 40 Rule 1. The substantive prayer is for an order of injunction to restrain the 5th and 6th defendants from disposing, leasing, or in any other way dealing with the property Nakuru Municipality/ Block 20/ 111, pending the hearing and determination of this suit.

The suit itself was commenced by way of plaint on 10 June 2014. The case of the plaintiff is that she purchased the suit property from the 1st defendant (Henry Keter Chepsengeny) on 16 September 2006 and they had a written agreement. The property was then transferred to her and a title issued to her on 28 October 2008. When she moved to take possession of the land, she was violently repulsed and her husband assaulted by people who claimed to be agents of the 2nd defendant (Rukima Estate Ltd). It is then that she came to learn that a second title had been issued by the 3rd defendant (the Nakuru District Land Registrar), to the 2nd defendant. It is her contention that the second title is fraudulent. It is not clear in the pleadings, but it seems as if the 2nd defendant transferred its interest in the title to the 5th defendant (Mamis Motor world Ltd), who later charged it to the 6th defendant (Equity Bank Ltd). In the suit, the plaintiff wants a declaration that she is the owner of the suit property; an eviction order to remove the 5th defendant from the property; discharge of charge; a permanent injunction to restrain the defendants from

the property and in the alternative, compensation at market value.

To her supporting affidavit, the plaintiff has annexed a copy of a leasehold title issued to her, and a certificate of official search dated 3 December 2008, showing that she is the owner of the suit property.

Only the 6th defendant responded to the application through grounds of opposition. Inter alia, it is averred that the prayers in the suit cannot lie against the 6th defendant as it has no interest in the property; that the applicant has no prima facie case with a probability of success; and that if the applicant suffers damage she can be compensated by an award of damages.

I have considered the application. I have seen that the plaintiff seems to hold a certificate of lease issued to her on 23 October 2008. I have also seen the certificate of official search conducted on 3 December 2008 showing that the plaintiff is owner of the suit property. The 5th respondent, who currently holds a separate title, has not filed anything to show how she acquired the suit property, and I have no material before me demonstrating that her title is a good title. Although the 6th defendant stated that it has no interest in the suit property, I can see from the certificate of official search that it has an interest as chargee, and there is no indication that the said charge has been discharged. Unless restrained, the 6th defendant may move to sell the property, in exercise of its statutory power of sale.

I think from the material before me, the plaintiff has demonstrated a prima facie case with a probability of success. The property therefore needs to be preserved.

In the premises, I do issue an injunction and make the following orders pending hearing and determination of this suit :-

- (i) That the 5th defendant is hereby restrained by an order of injunction from offering for sale, selling, charging, or in any other way dealing with the land parcel Nakuru Municipality/ Block 20/111.*
- (ii) That the 6th defendant is hereby restrained by an order of injunction from offering for sale, selling or creating any further charge over the land parcel Nakuru Municipality/Block 20/111.*
- (iii) That there is hereby issued an order of inhibition, inhibiting the registration of any disposition, in the register of the land parcel Nakuru Municipality/ Block 20/111.*

The costs of the application shall abide the outcome of the suit.

It is so ordered.

Dated, signed and delivered in open court at Nakuru this 11th day of June 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presences of : -