



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENTAL AND LAND DIVISION
ELC CIVIL SUIT NO. 1098 OF 2013

BHUPENDRAKUMAR PREMCHAND SHAH..... 1ST PLAINTIFF

DILIPKIMAR PREMCHAND SHAH 2ND PLAINTIFF

VERSUS

NENGEE INVESTMENTS COMPANY..... DEFENDANT

RULING

The Plaintiff by a Notice of Motion application dated 16th September 2013 interlia seeks orders:-

1. THAT a temporary injunction do issue restraining the Defendant/Respondent by itself, its servants, employees, agents or any other party claiming title under it or otherwise connected with it howsoever from entering into alienating or in any other way interfering with **L.R. NO. 209/9758** located along Eldama Ravine road off Peponi road, Westlands, Nairobi pending hearing and determination of this suit.
2. That an order do issue allowing the Plaintiffs/Applicants to bring down the fencing which has been erected on **L.R. NO. 209/9758** along Eldama Ravine road, off Peponi Road Westlands Nairobi by the Defendant/Respondent and that the officer commanding station (OCS) Parklands police station do provide necessary police assistance and supervision to the plaintiffs/Applicants.
3. That in order to preserve the subject property being **L.R. NO. 209/9758** the Plaintiffs/Applicants do and are hereby allowed to erect a perimeter wall around the said property subject to obtaining necessary approvals from the Nairobi City Council.

The Plaintiffs Notice of Motion was ordered to be served on the Defendant/Responded by way of advertisement in the Standard Newspaper which the Plaintiffs did and on 27th September 2013 **M/S S.J. Nyang & Company Advocates** filed a memorandum of appearance for the Defendant. On 30/9/2013 the parties counsel appeared before me when **MS Nyang Advocate** acting for the Defendant sought leave to file a response to the application on behalf of the Defendant. The court granted 14 days leave to the Defendant to file their response and corresponding leave of 7 days to the plaintiff to file a further affidavit from date of being served with the response. The court further directed that the matter be mentioned on 8/11/2013 for further directions. On 8/11/2013 neither counsel for Defendant, or the Defendant appeared, and no response had been filed for the Defendant. Mr. Wasonga appeared for the plaintiff and the court directed the plaintiffs to file their submissions and the matter was directed to be mentioned on 15/1/2014 when the ruling on the application was reserved.

In brief it is the plaintiffs case that they are the registered owners of **L.R. NO. 209/9758** Eldama Ravine

road Off Peponi Road Westlands, Nairobi having been so registered pursuant to a Decree in **HCCC NO.1118 OF 1986** consolidated with **HCC MISC NO. 328 of 2002 (O.S)** where the court inter alia ordered:

“That the Registrar of Titles do remove the caveat lodged by M/S South East Distributors on the 8th day of October 2001 against the title to Land Reference NO. 209/9758 and to register the Transfer of the Title to Land Reference NO. 209/9758 in favour of DilipKumar Premchand Shah and Bhupendra Kumar Premchand Shah”.

The copy of the decree is annexed and marked **“BPS4”**.

The copy of the grant annexed and the certificate of search issued on the 29th August 2013 shows the transfer in favour of the Plaintiffs was registered on 9/8/2012 and that no other transactions have been effected on the property since the plaintiffs were registered as the owners.

Upon being registered owners the Plaintiffs became entitled to enjoy all the rights and privileges that go with ownership as envisaged under section 25(1) of the Land Registration Act NO. 3 of 2012.

Section 25 (1) of the Act provides:-

“ The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject-

- a. **To the leases, charges and other encumbrances and to the conditions and restrictions if any, shown in the register, and**
- b. **To such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register”.**

The Plaintiffs have demonstrated that they are the registered owners of the suit property and in terms of section 26 (1) of the **Land Registration Act** they are the absolute and indefeasible owners of the suit property and the title they hold is not subject to challenge save as under the provisions of section 26 (1) (a) and (b) of the act on the limited ground of fraud or misrepresentation to which they have to be shown to be party to or that the title they hold is shown to have been acquired illegally, unprocedurally or through a corrupt scheme.

The evidence and material placed by the plaintiffs before the court has not been contraverted and/or challenged by the Defendant who has not responded to the application. On the basis of the affidavit evidence and documentary evidence tendered by the Plaintiffs I am satisfied that the Plaintiffs have established a prima facie case with a probability of success against the Defendant. As the registered owners of the suit Land, the Plaintiffs would suffer irreparable damage if the Defendant is allowed to wantonly invade the suit property when it has not been demonstrated they have any interest or right to the suit property.

I find the plaintiffs application dated 16/9/2013 to have merit and I accordingly grant prayers NOS. 3, 4 and 5 of the Notice of Motion. The costs of the application will be in the cause.

Ruling delivered at Nairobi this 28th day of February 2014

J.M. MUTUNGI

JUDGE

In presence of:

.....1st PLAINTIFF

.....2nd PLAINTIFF

..... DEFENDANT