



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 242 OF 2015

GEORGE OLOO ARINGO.....PLAINTIFF

VERSUS

ANTHONY OMONDI KADEDE.....1ST DEFENDANT

P & T EMPLOYEES HOUSING CO-OPERATIVE SOCIETY LTD.....2ND DEFENDANT

THE COUNTY LAND REGISTRAR, MACHAKOS.....3RD DEFENDANT

THE HON. ATTORNEY GENERAL.....4TH DEFENDANT

RULING

1. The Application before me is the one dated 14th December, 2015 in which the Plaintiff is seeking for the following orders:

a. That an inhibiting order do issue inhibiting the 3rd Defendant, the County Land Registrar, Machakos County, his/her agents, servants and/or employees or anybody working under him/her from registering any dealings over all the parcels of land known as Title Nos. Mavoko Town Block 2/11049 and Mavoko Town Block 2/11050, hereinafter referred to as “the suit properties”, until the hearing and determination of this suit and/or until further orders of this court.

b. That the Honourable Court be pleased to issue an order of injunction restraining the 1st Defendant either by himself or through his agents and or servants or anyone claiming under him from dealing with, charging, mortgaging, selling, transferring, leasing or entering into parcels of land known as Title Nos. Mavoko Town Block 2/11049 and Mavoko Town Block 2/11050 hereinafter referred to as “the suit properties”, or otherwise interfering with the quiet possession and occupation by the Plaintiff of the said properties until the hearing and determination of this suit and/or until further orders of this court.

c. The costs of this Application be borne by the Defendants/Respondents.

2. The Application is premised on the grounds that the Plaintiff is the purchaser for value of the suit properties having purchased them from an agent who was duly appointed by the 2nd Defendant; that the Plaintiff was granted vacant possession in the year 2004; that the issuance of a Title Deed to the 1st Defendant was done fraudulently and that an injunctive order should issue.

3. According to the Plaintiff’s Affidavit, he purchased the two plots for Kshs. 206,934 and that he took

possession of the plots upon paying the deposit in December, 2004.

4. It is the deposition of the Plaintiff that he purchased the suit plots through Mosica Properties Ltd and that when he did an official search later, he learnt that the 1st Defendant had been registered as the proprietor of the two plots.

5. It is the Plaintiff's deposition that since he paid the full purchase price and was given vacant possession of the suit land, the interim orders of injunction should issue.

6. In response, the 1st Defendant filed Grounds of Opposition in which he stated that the Plaintiff does not have known proprietary or legal rights over the two properties; that not being the registered proprietor of the land, the Plaintiff cannot sustain a claim for injunction and that the Application should be dismissed.

7. In his Replying Affidavit, the 1st Defendant deponed that if the Plaintiff has any claim, the same can only lie as against the people who defrauded him and that Mosica Properties Limited are unknown to him.

8. On his part, the 2nd Defendant's Secretary deponed that the Plaintiff is a stranger to the 2nd Defendant; that the purported entry in the suit land by the Plaintiff was without its authority and that the happenings between the Applicant and the alleged Mosica Investment Company was a scheme to unlawfully grab the suit land from the 2nd Defendant.

9. The 2nd Defendant's Secretary finally deponed that the Plaintiff has not exhibited the sale agreement between himself and the alleged Mosica Properties Limited; that the Applicant has not annexed any document evidencing payment of the purchase price and that the Plaintiff has not shown the relationship between plot numbers 345 and 344 on the one hand and parcels of land known as Mavoko Town Block 2/11049 and 11050.

10. The advocates for the Plaintiff and the 1st Defendant filed their respective submissions and authorities which I have considered.

11. The evidence before this court shows that on 22nd July, 2005, Mosica Properties Limited issued to the Plaintiff with a letter of allotment for plot numbers 344 and 345 in L.R. No. 2/170 measuring 50 x 100 feet.

12. According to the said letter of allotment, the Plaintiff undertook to pay the purchase of Kshs. 82,300 X 2 for a period of 36 months.

13. The Plaintiff has exhibited a certificate of completion showing that he completed paying the full purchase price for the two plots on 23rd September, 2009.

14. The Plaintiff has shown to the court a purported Memorandum of Understanding between the said Mosica Properties Limited and the 2nd Defendant which was to come in effect on 21st July, 2002.

15. According to Clause 1.1. of the purported Memorandum of Understanding, the Memorandum of Understanding was not to be construed as establishing a relationship of agent and principal as between the parties. The clause further provided that *"each party shall have full control of its operations and shall be fully responsible for activities and duties by or on its behalf"*.

16. Indeed, one of the obligations of Mosica Properties Limited in the impugned Memorandum of Understanding was to *"look for suitable land and sell it at suitable terms and conditions to P&T Employees Housing Co-operative Society Ltd"*.

17. The impugned Memorandum of Understanding that the Plaintiff is relying on did not authorize the said Mosica Properties Limited to sell to third parties land belonging to the 2nd Defendant. Indeed, the

document clearly stated that the two parties did not have an agent/principal relationship.

18. In the circumstances, the Plaintiff cannot rely on the said Memorandum of Understanding to lay a claim to land that was duly registered in favour of the 2nd Defendant before the same was transferred to the 1st Defendant.

19. In any event, other than the letters of allotment that were issued to the Plaintiff by Mosica Properties Limited and the certificate of completion, the Plaintiff has not exhibited any sale agreement that he entered into with the said Mosica Properties Limited, contrary to the provisions of Section 3(3) of the Law of Contract Act.

20. Furthermore, the Plaintiff has not joined the purported seller in these proceedings, thus denying the court the opportunity of establishing the relationship between Mosica Properties Limited and the 2nd Defendant.

21. Considering that the 1st Defendant has shown that he purchased the suit land from the registered proprietor, and in view of the absence of any agent/principal relationship between Mosica Properties Limited and the 2nd Defendant, I find that the Plaintiff has not established a *prima facie* case with chances of success.

22. For those reasons, I dismiss the Plaintiff's Application dated 14th December, 2015 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 30TH DAY OF JUNE, 2017.

O.A. ANGOTE

JUDGE