



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC SUIT NO. 519 OF 2013**

**MARY WAITHERA & ANOTHER.....PLAINTIFFS**

**=VERSUS=**

**JOSEPH ORINA & 2 OTHERS.....DEFENDANT**

**RULING**

1. The Plaintiff/Applicant filed a Notice of Motion dated **28<sup>th</sup> April 2015**, in which they sought the following orders:-

***1. That this Honourable Court be pleased to issue an order directing the 2<sup>nd</sup> and the 3<sup>rd</sup> Defendants to demolish the illegal construction and or structures constructed in the suit property being plot No.40 Kayole Shopping Centre pending the hearing and determination of the suit herein.***

***2. That in the alternative to prayer (1) above the Honourable Court do declare the said construction and or structure erected in the suit property Plot No.40 Kayole Shopping Centre as illegal constructions pending the hearing and determination of the said suit herein.***

***3. Costs of this application.***

2. The applicants contend that they are allottees of plot No.40 Kayole Shopping Centre in Nairobi (suit property). The plot was allocated to them on 22<sup>nd</sup> November 1993 by the second respondent. The third respondent invaded the suit property and put up an illegal building which he has let out to tenants; that the said building was poorly constructed without approval from the second respondent and that should anything happen, it is the applicants who will be blamed as they are allottees of the suit property. They therefore seek orders of the Court directing the second and the third respondents to demolish the building on the suit property or in the alternative a declaration that the building on the suit property is illegal.

3. The applicants further contend that the third respondent is facing criminal charges for forgery in the chief Magistrates' Court in Nairobi and that the second respondent in its defence has stated that the construction on the suit property is illegal as there was no approval of the plans by the second respondent.

4. The third respondent has opposed the applicants' application through a replying affidavit sworn on 11<sup>th</sup> June 2015. The third respondent depones that he was allocated the suit property on 27<sup>th</sup> September 2002 by the second respondent. He paid all the requisite charges after which he applied for permission to develop the suit property. Permission was granted by the second respondent as per the approved plans annexed to his affidavit.

5. The suit property was allocated to him after the applicants failed to meet conditions in the letter of allotment given to them. He further states that the applicants have no interest in the suit property having sold their interest to a third party and that the second applicant made a statement at Kiambu CID Headquarters indicating that he no longer had interest in the suit property . The second applicant indicated in that statement that the person who has interest in the suit property is one Nemesys Warugongo.

6. I have considered the applicants' application as well as the opposition thereto by the third respondent. I have also considered the submissions filed by the applicants. The issue for determination in this application is whether the building on the suit property should be demolished. The dispute in this case is on the ownership of the suit property. The applicants are pressing for demolition not on account that it is on a property which belongs to them but rather on account that they do not want to be blamed should the building come down. They contend that the building was put up without approval and that it is a danger to the tenants who are occupying it.

7. The third respondent who has since died annexed approved building plans by the second respondent. This court is not in a position to

determine whether the building was put up in accordance with the approved plans. The court does not know the state of the building. The court cannot therefore issue an order for its demolition. There are agencies who are tasked with the responsibility of ascertaining the soundness of buildings. These includes the National Construction Authority which has the mandate and capacity to ask building owners to pull down buildings which are a danger to the public. I therefore find that there is no basis upon which this court can order demolition of the building on the grounds put forth or issue an order declaring the buildings as illegal. The court can only make appropriate orders upon hearing of the suit. I find that this application lacks merit. The same is hereby dismissed with costs to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

It is so ordered.

**Dated, Signed and Delivered at Nairobi this 12<sup>th</sup> day of April 2018.**

**E.O .OBAGA**

**JUDGE**

In the presence of ;-

M/s Wachira for Plaintiff/Applicant

Court Assistant: Hilda

**E.O .OBAGA**

**JUDGE**