



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 30 OF 2015**

**SIMON MBUGUA .....PLAINTIFF/APPLICANT**

**VERSUS**

**COUNTY GOVERNMENT OF TRANS-NZOIA.....1ST DEFENDANT/RESPONDENT**

**COUNTY EXECUTIVE OFFICER, LAND,**

**HOUSING & URBAN DEVELOPMENT ..... 2ND DEFENDANT/RESPONDENT**

**PHYSICAL PLANNER, TRANS-NZOIA COUNTY.....3RD DEFENDANT/RESPONDENT**

**RULING**

1. This is a ruling in respect of a Notice of Motion dated **6/3/2015**. The applicant seeks an injunction against the respondents restraining them from interfering with the property known as **L.R. No. Kitale Municipality Block 4/487** situated within Kitale Municipality. The applicant contends that he is the registered owner of the property. Sometimes in **February, 2015**, the respondent moved into the property and fenced it and accumulated building materials on the same. They are threatening to go on with construction without his consent.

2. The property is registered in the name of the applicant who has been paying rates to the County Government of Trans-Nzoia who is the first respondent in this case. The applicant contends that the fencing of the property by the respondents is interfering with his use of the property.

3. The respondents have opposed the applicant's application based on grounds of opposition filed in court on **7/5/2015**. The respondents contend that the applicant's application is misconceived, incompetent and fatally defective and that it offends the provisions of the law. The respondents further contend that the applicant has not met the threshold for grant of interlocutory injunction. They further contend that no injunction can issue against a Government.

4. The respondents further contend that the applicant's application is not supported by the annexed documents and that the plot in issue is public land which was illegally allocated to the applicant and that the court should not grant an injunction for to do so will amount to the court promoting illegal allocation of public land.

5. I have considered the applicant's application as well as the grounds of opposition by the respondents. The first issue which emerges for determination is whether an injunction can issue against a County Government. The counsel for the respondents submitted that an injunction cannot issue against a County

Government. He cited the provisions of the **Government Proceedings Act Cap 40 Laws of Kenya. Section 16 (2) of the Government Proceedings Act** provides as follows:-

***“The court shall not in any civil proceedings grant any injunctive or make any order against an officer of the Government if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in proceedings against the Government”.***

6. The Government Proceedings Act forbids courts from giving injunctive orders against the Government. The section quoted hereinabove extends the same protection to Government Officers. This Act was in place even before the devolved system of Government came into force. The question which then arises is whether the Act can extend to the County Governments. The County Governments are body corporate entities with power to sue and be sued. There is no provision in the **County Government Act of 2012** which protects them from injunctive orders. I do not think that it was the intention of the legislature that the County Governments were to enjoy the same status as the National Government. If this was to be the intention, then the Government Proceedings Act would have been amended to include County Governments. I therefore do not find that the County Governments can come under the umbrella of the Government Proceedings Act.

7. The other issue for determination is whether the applicant has met the threshold, for grant of an injunction. The principles for grant of interlocutory injunction were well set out in the case of **Giella -vs- Cassman Brown & Co. Ltd 1973 EA 358**. First an applicant must demonstrate that he has a prima facie case with probability of success. Second, an injunction will not normally be granted unless the applicant might otherwise suffer irreparable loss which may not be compensated in damages. Third, if the court is in doubt, it will decide the application on a balance of convenience.

8. In the instant case, the applicant has demonstrated that he is the registered owner of the property. A Certificate of Lease was issued to him on 27/9/2002. He has been paying rates to the County Government of Trans-Nzoia which is the first respondent. The applicant has also annexed photographs showing building materials which have been accumulated on the property. The respondents did not file any replying affidavit to deny these facts. The respondents are instead claiming that the plot in issue was illegally allocated. There is no evidence to show that this is the case.

9. A look at the documents annexed by the applicant to his affidavit show that he has demonstrated that he has a prima facie case against the respondents. In the case of **Mrao -vs- First American Bank of Kenya Limited & 2 Others [2003] KLR 125**, a prima facie case was described as follows:-

***“A prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.***

10. The applicant in this application has demonstrated that he is the registered owner of the property in issue. The respondents have accumulated building materials on the same property. They have infringed on the applicant's right to enjoyment of his property without proper cause. The applicant is entitled to protection from such interference. It will be unfair for one party to come and enter another's property and start constructing on it and come and argue that the other party has not demonstrated that he will suffer loss which will not be compensated in damages. The respondents actions are clearly wrong and the applicant is entitled to injunction orders.

I therefore allow the applicant's Notice of Motion dated **6/5/2015** in terms of **prayer (c) and (d)**.

It is so ordered.

Dated, signed and delivered at Kitale on this **21st** day of **July, 2015**.

**E. OBAGA**

**JUDGE**

**COURT**

Ruling delivered at **10.45 am** in the absence of parties who were aware of today's date.

Court Assistant – Winnie.

**E. OBAGA**

**JUDGE**

**21/7/2015**