



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC CASE NO. 118 OF 2014

KIANG'OMBE SQUATTERS HOUSING SCHEME

CO-OPERATIVE SOCIETY LIMITED..... APPLICANT/PLAINTIFF

VERSUS

YOUNG SURVEYORS 1ST RESPONDENT/DEFENDANT

KIANG'OMBE SQUATTER SETTLEMENT SCHEME (Suing

through

THEIR LEADERS MILKA WANGUI KAMAU, FLORENCE WANJIKU MUNGAI

AND ANTHONY MUNDIA2ND RESPONDENT/DEFENDANT

MUTHONI HUSSEIN ELIZABETH 3RD RESPONDENT/DEFENDANT

MERCY WANGECHI MUNGAI4TH RESPONDENT/DEFENDANT

REUBEN IRUNGU NJORO5TH RESPONDENT/DEFENDANT

GABRIEL NJUNGO WAWERU6TH RESPONDENT/DEFENDANT

PETER MWAURA NDURA7TH RESPONDENT/DEFENDANT

PAUL NGEI KATINGI8TH RESPONDENT/DEFENDANT

RICHARD KINGORI KARIARU9TH RESPONDENT/DEFENDANT

RUTH WANGARI KINGORI10TH RESPONDENT/DEFENDANT

SUSAN WANJIKU MUGO11TH RESPONDENT/DEFENDANT

RULING

By a plaint filed herein on 13th May 2014 the plaintiff, which describes itself as a Co-operative Society made up of 950 members and 190 siblings who all reside within Kiang'ombe Squatters Settlement Scheme for over 20 years, filed this suit against the defendant seeking general damages and a permanent injunction to restrain the defendants whether by themselves, servants, agents, employees or

any other person from entering land parcel No. L.R 4953/2358, 2359, 2019, 2151, 2152, 2153, 2154, 2155, 1953, 4025, 4350, 1952, 2018, 2213, 1932 and 4044 located in Thika which the Government has allocated the members of the plaintiff and for which the plaintiff continues to pay land rates. However, in February 2014, the plaintiff noticed that the defendants had started digging and building on the said property (hereinafter the suit property).

The 2nd and 3rd defendants filed a defence denying all those allegations adding that it is infact the 2nd defendant who are the bona fide representatives of the squatters and that SIMON KIHORO who has described himself as the chairman of the plaintiff is masquerading as the one heading the settlement scheme yet he is a land broker living in a high class area of Thika. The 2nd and 3rd defendants allege that MILKA WANGUI KAMAU is the bona fide chairlady of the squatters and is the one spearheading the land allocation project in the scheme. No defence has been filed by the other defendants.

Simultaneously with the filing of the plaint, the plaintiff filed a Notice of Motion seeking orders injuncting the defendants from developing, constructing, digging, excavating or otherwise dealing with the said suit property pending the hearing of this suit. The same is supported by the affidavit of SIMON KIHORO who describes himself as the current chairman of the plaintiff.

The application is opposed and in the replying affidavit of MILKA WANGUI KAMAU who describes herself as the chairlady of KIANG'OMBE SQUATTER SETTLEMENT SCHEME, she depones, inter alia, that the applicant does not own the suit property nor represent the Kiang'ombe Squatters and that SIMON KIHORO who purports to be the plaintiffs chairman is an imposter and land broker masquerading with a brief case Co-operative society in order to scuttle the programme of the demarcation of the Kiang'ombe land to squatters and that the suit land was allocated to individual squatter members and not a co-operative society as alleged. That the said individual squatters have been in occupation of the said suit land for so many years having put up developments and therefore injunctions cannot issue. In her replying affidavit, MILKA WANGUI KAMAU goes on to give a history of how the said settlers came to be on the land culminating with a decision made in December 2003 when the then Minister for Lands or Settlements and the then Member of Parliament for Juja Constituency visited the Kiang'ombe Scheme and issued allotment letters to the settlers. Annexed to her affidavit are various correspondences with various Government Departments over the Scheme as well as a list of the squatters.

I have considered the application, the reply thereto, the annexures and submissions by counsels.

The principles for the grant of an interlocutory injunction are as follows:-

1. ***The applicant must show a prima facie case with a probability of success***
2. ***An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages***
3. ***If in doubt, the Court will decide such an application on the balance of convenience – GIELLA VS CASSMAN BROWN & CO. LTD 1973 E.A 358.***

What is a prima facie case in a Civil application? In **MRAO LTD VS FIRST AMERICAN BANK OF KENYA LTD & 2 OTHERS 2003 K.L.R 125**, the Court of Appeal defined such a case 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 property directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.

Has the plaintiff, on the basis of the material before me, established that it has a prima facie case as set out in the **GIELLA** case (supra)? What strikes me as strange is the close similarity between the names of the plaintiff and the 2nd defendant. While the plaintiff describes itself as KIANG'OMBE SQUATTERS HOUSING SCHEME COOPERATIVE SOCIETY LIMITED, the 2nd defendant is described as

KIANG'OMBE SQUATTERS SETTLEMENT SCHEME. While the plaintiff has annexed a certificate of registration showing that it was registered on 28th February 2002 (**annexture SK 1**), the other annexures to the supporting affidavit refer to either the Kiang'ombe Cattle Grazing Group, Kiang'ombe Housing Scheme, Kiang'ombe Settlement Village or Kiang'ombe Squatters Settlement Scheme. It has not been demonstrated that the plaintiff was allocated any land in the said Scheme. If anything, from annexture **MWK 1** of the 2nd defendant herein, it is clear that as far back as 1993, the then Commissioner of Lands wrote to the Director of Physical Planning to explore the possibility of re-planning the area to settle members of the Kiang'ombe Cattle Grazing Group as to evict them would "**generate into an explosive situation**". Further, the replying affidavit of MILKA WANGUI KAMAU contains two annexures (**MWK 2** and **MWK 4**) bearing a list of the residents of Kiang'ombe Settlement Scheme together with the minutes of a meeting held on 20th February 2012 in which a committee to spearhead the completion of beaconing of the plots to the squatters and issuance of title deeds was formed. Given all the above, it is clear to me that the plaintiff has not established a prima facie case as set out in the **GIELLA** case (supra) to warrant the orders sought in the plaintiff/applicant's Notice of Motion dated 13th May 2014.

The second test as set out in the **GIELLA** case (supra) is that the applicant must demonstrate that unless the injunction is granted, he will suffer irreparable injury which would not adequately be compensated by an award of damages. In the plaint subject matter of this suit, the plaintiff/applicant seeks the following main remedies:-

1. **General damages**
2. **A permanent injunction restraining the defendant whether by itself, servant or agents, employees, authorized representatives of any other person or authority from entering, remaining upon, further trespassing upon the land or in any other way dealing with the suit premises.**

From that pleading, it is clear that the plaintiff/applicant's loss, if any, arising out of the alleged trespass onto the suit property can be quantified in damages and that is why there is a specific prayer for general damages. In the circumstances it cannot therefore be claimed that unless the order sought is granted, the plaintiff/applicant will otherwise suffer irreparable injury that cannot adequately be compensated by an award of damages. The plaintiff/applicant has therefore also failed the second test set out in the **GIELLA** case (supra). There is therefore no need for this Court to consider the application on a balance of probability.

Ultimately therefore, upon considering the plaintiff/applicant's Notice of Motion dated 13th May 2014, I find it lacking in merit. The same is accordingly dismissed with costs.

It is so ordered.

B.N. OLAO

JUDGE

19TH DECEMBER, 2014

19/12/2014

Before

B.N. Olao – Judge

Mwangi – CC

Mr. Mwangi for Mr. Wesonga for Plaintiff/Applicant – present

Mr. Magani for Defendant/Respondent – absent

COURT: Judgment delivered in Court this 19th day of December, 2014

Mr. Mwangi for Mr. Wesonga for Plaintiff/Applicant present

Mr. Magani for the Defendant/Respondent absent.

B.N. OLAO

JUDGE

19TH DECEMBER, 2014