



REPUBLIC OF KENYA
HIGH COURT AT NAIROBI (NAIROBI LAW COURTS)

ENVIRONMENTAL & LAND CASE 100 OF 2012

BENJAMIN ANAMI IMBENZI

BETTY ABWONA ANAMI.....PLAINTIFFS/APPLICANTS

VERSUS

JOHN ELUNGATA

ROBERT NZUKI

JULIUS K. WANJAU MBITHI.....DEFENDANTS/ RESPONDENTS

RULING

1. Coming up before me is the Notice of Motion dated 13th December, 2012. It is brought under Order 40 Rules 1(a), 2(1) & (2) and 4(1), Order 51 Rule 1 of the Civil Procedure Rules, 2010 and Section 13(1) and (7) (g) of the Environment & Land Court, 2011. The Plaintiffs pray for Injunction to restrain the Defendants from interfering with the quiet possession of and/or trespassing onto their property known as **Land Reference Number 2259/696 (Original Number 2259/15/55/3) (the “Suit Property”)**. The Plaintiffs rely on the Supporting Affidavit of the 2nd Plaintiff sworn on 13th December, 2012.

2. In a nutshell, the Plaintiffs’ case is that they own the suit property. As evidence thereof they have annexed a copy of their **Certificate of Title No. I. R. 119220** in respect of the suit property. They contend that the suit property was part of a larger portion of Land known as **Land Reference No. 2259/15/55/3**. They have attached credible evidence of their part ownership thereof and the subdivision process undertaken resulting in their ownership of the suit property. They allege that the Defendants being the District Commissions, District Officer, Chief and Assistant Chief of Karen Location, Langata Division, had trespassed on the suit property and tried to stop the construction work being undertaken by the Plaintiffs on the suit property.

3. The Defendants, though proof of service was adduced, did not file any Replying Affidavit, neither did they attend Court or sent any representation to Court. They did not produce a competing title to the suit property and though the Plaintiffs claim the Defendants referred to the suit property as “Public utility

land” no evidence to support that notion was produced by the Defendants.

4. To my mind, this application is relatively straightforward. Do the applicants qualify for the award of the Injunctive Orders which they seek herein? To answer that question, I wish to refer to and rely on the precedent set in the case of **GIELLA VS CASSMAN BROWN (1973) EA. 358** in which the conditions for the grant of an interlocutory injunction were settled as follows:-

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance or convenience.”

Now let us analyse the applicant’s application as against these set principles to determine whether to grant or not to grant the prayers for injunctive relief sought by the applicants.

i) Has a prima facie case been established? To my mind, I have been convinced, that the applicant’s claim of ownership of the suit property is genuine. They have produced in evidence a copy of their title document which remains unrebutted by the Defendants. Accordingly, I find that the Applicants have established a prima facie case with a probability of success.

ii) Will the Applicants suffer irreparable injury which would not be adequately compensated by damages? To my mind, it would not be right to say that the Plaintiffs can be compensated in damages. They have gone through the tedious procedure of purchasing a portion of land with others, had it subdivided with the resultant ownership of the suit property and are now in the demanding process of building their dream home therein. Damages would be inadequate to compensate them for the sentimental value they must now have over the suit property. Further, though the value of the suit property can be ascertained, I hold the view that damages are not always a suitable remedy where the Plaintiff has established a clear legal right or breach. See **JM GICHANGA VS CO-OPERATIVE BANK OF KENYA LIMITED (2005) Eklr & AIKAM VS MUCHOKI (1984) KLR 353**. In this regard, I find that this condition has been fulfilled.

iii) What is the balance of convenience in this application? The Plaintiffs are in possession and have began the process of construction on the suit property. It would inconvenience them if the status quo is not maintained more than it would the Defendants who are not in possession and have no claim of ownership over the suit process. Accordingly, I find for the Plaintiffs that they have satisfied this condition.

5. In the light of the above, I allow the application with costs to the applicant.

SIGNED & DELIVERED ON THE 22ND DAY OF FEBRUARY 2013.

**MARY M. GITUMBI
JUDGE**