



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 211 of 2013

PAUL MWANGI NJOROGEPLAINTIFF/APPLICANT

=VERSUS=

SIMON G. NDEGWA.....1ST DEFENDANT/RESPONDENT

NAIROBI CITY COUNCIL.....2ND DEFENDANT/RESPONDENT

RULING.

1. By an application dated 11th February, 2013 , the applicant herein *Paul Mwangi Njoroge* has sought for orders :-

i. Spent,

ii. Spent,

iii. That pending the hearing and determination of this suit, the Defendants/ Respondents by themselves , their agents and or servants or employees be restrained from trespassing , constructing thereon, developing , selling, alienating , disposing off, dealing with , trespassing , and or in any way dealing with the plaintiff/ Applicant *Plot No. 226 Kahawa West* .

iv. That cost of this application be provided for.

2. The application was supported by the grounds on the face of the application and also by the supporting affidavit of *Paul Mwangi Njoroge*. The Plaintiff stated that he was the owner of *Plot No. 226 Kahawa West (Phase II)* which was allocated to him by the 2nd Defendant on the 11th August 1992. He further stated that he has been in possession of the said plot since 1999 when the beacons were shown to him by 2nd Defendant and has been paying annual rent since then. He contended that on 2nd February, 2013 he found a trespasser on his plot who was busy constructing permanent structures thereon. He further learnt that it was the 1st Defendant who was unlawfully constructing the permanent structure with full knowledge of the 2nd Defendant. He further stated that the plot has never been re-possessioned from him and 1st Defendant has no claim or interest over the same. Plaintiff alleged that he intends to construct on the said plot but he cannot do so now due to the Defendants action and he stands to suffer irreparable loss unless the Defendants are restrained from dealing or interfering with the plaintiffs *Plot No.226 Kahawa West*

(phase II)

3. In his Replying Affidavits **Paul Mwangi Njoroge** reiterated that he was allocated **Plot No. 226 Kahawa West (Phase II)** on 11th August, 1992. He further paid Stand Premium and has continued to pay annual rent. He annexed various annexures to support his claim. The annexures were **PMN I, PMN II, PMN III, IV, V, and VI**. He further averred in his Affidavit that he is still registered as the owner of the plot and the 1st Defendant action is therefore unlawful. That he is in the process of commencing construction on the plot and even obtained finance for the project but he cannot do so due to the action of 1st Defendant.

4. The application was opposed by the 1st Defendant, **Simon Gwandaru Ndegwa**. The 1st Respondent averred that he is currently in possession of the suit property plot No. 226 Kahawa West Phase II. He contended that he bought it in the year 2012 from **Mary Njoki Ndegwa** and **Joseph Ndegwa Ndungu**. He produced various documents to support his assertions. He alleged that the plaintiff has never been in possession of the property and that the only time he paid ground rent since 1992 was on 25th January, 2013 after Respondent ordered the plaintiff workers not to enter the property.

5. I have considered the instant application and the rival arguments by both counsels. The issue for determination is whether the Applicant has demonstrated that he has a **prima facie case** with high probability of success. Has the applicant's application met the threshold for granting of injunctive orders as was held in the case of **Giella Vs Cassman Brown Ltd (1973) EA 358**.

These conditions are that the applicant must show a **prima facie case** with a probability of success. Secondly, 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. Thirdly **if** the Court is **in doubt**, it will decide an application on the balance of convenience.

From the available evidence the applicant herein **P Mwangi Njoroge** obtained letter of allotment for **Plot No. 226 Kahawa West** on 11th August, 1992. That is evidence by **PMN I**.

The applicant also paid for the stand premium on the same date as per **PMN 2** and obtained the Beacon certificate on 11/8/1992. The other evidence of payment for City Council shows rent on 25/1/2013. The Respondent alleged that applicant paid that amount after the Respondent kept away the applicants workers. There was no evidence that applicant was in possession of this plot since 1992 nor paid for the annual rates or ground rent to the City council of Nairobi. There is also evidence from the Respondent that that the plot in question Plot No. 226 Kahawa West phase II was allocated to one **Peter Muchoki** on 4/11/1997 as per **SN1**. The said Peter Muchoki paid the **Stand Premium** in November, 1997, **ground rent** in the year 2006 and 2007 as per **SN3** and **SN4**.

He also received Beacon Certificate on 4/11/1997 as per SN4. The applicant therefore has not been in quiet enjoyment of the said plot as there is no evidence that he was in possession of the same. Though he has letter of allotment dated 1992 he has not provided evidence that the same was not revoked.

The Court cannot find and hold that applicant has a prima facie case with a probability of success. The applicant has not been in possession of the plot in question. Though he alleged that he now intends to put up some residential houses on the plot and he had even obtained a financier, there is no such evidence and I cannot therefore find and hold that the applicant might suffer irreparable loss or injury which would not adequately be compensated by an award of damages. I rely on the case of **East Africa industries Vs Trufoods (1972) EA 420**.

On the balance of convenience, the Defendant contended that he took over possession of the plot after he bought it from one **Mary N Ndegwa** and **Joseph Ndungu** in the year 2012. On the other hand, there is no evidence that the Plaintiff has been in occupation of the plot since 1992 when it was allegedly allotted to him. The balance of convenience would therefore not tilt in favour of the applicant herein. Refer to the case of **James Jamwa Ndeda Vs. Dorine Alouch Oluoch, Kisumu High Court Civil Case No. 136 of 2007**.

Having considered the Notice of Motion in totality and the annexures thereon, i find that the plaintiff has failed to satisfy the conditions for the grant of temporary injunctions as set out in the case of **Giella Vs Cassman Brown Ltd.** However, this Court has a duty to preserve the property and safeguards the interest of each party pending the hearing and determination of the suit. It would be detrimental to the applicant if the suit property or plot is sold or alienated before the suit is determined.

I will be guided by the decision in the case of **Ougo & Another Vs Otieno 1987 KLR 1** where the Court of Appeal stated that:

“ The general principle where there are serious conflicts of facts, that court should maintain the status quo until the dispute has been decided in trial”.

I will therefore, issue the **Status Quo Order** in the following terms

a) *Pending the hearing and determination of the main suit, none of the parties herein will have any dealing or interference on the disputed **Plot No. 226 Kahawa West Phase II**. The plot will remain as it is at the moment.*

b) The Plaintiff will have to set the main suit for hearing within a period of 12 months failure to do so, the **Status Quo** Orders will automatically lapse or be discharged after 12 months.

Costs of the application be in the cause.

Dated, signed and delivered this 24th May, 2013

L. N. GACHERU
JUDGE

In the Presence of:-

.....For the Plaintiffs
.....For the Defendant
.....Court Clerk

L. N. GACHERU
JUDGE