



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 607 of 2012

HENRY D N KARIUKI.....PLAINTIFF

VERUS

KENYA RURAL ROADS AUTHORITY.....DEFENDANT

RULING.

The Applicant herein **Henry D.N Kariuki** has brought this application dated 14/9/2012 against the Defendant **Kenya Rural Roads Authority**.

The applicant seeks for Temporary Restraining Order against the Respondent / Defendant by their agents, servants, employees or anybody else claiming through them from demolishing alienating or in any other manner interfering with the Plaintiff's ownership of **LOC 1/KIRWARA/275/30** (herein referred to as Slaughter house).

Applicant also sought for costs to be provided for . The Applicant relied on the grounds on the face of the application and on the surporting affidavit of HENRY D N KARIUKI. The Applicant stated that he is the bonafide allottee of plot No. LOC /275/30 Kirwara market from the County Council of Thika and that the saod plot has been a family land for a long time dating back to the 1960 and a slaughter house has always existed thereon dating back then.

That the Defendant gave him notice to demolish the said building and that action by the Defendant is injurious and ultra-vires as the Respondent has no authority to demolish any building as stipulated in section **25(1) 9(a) of the Kenya Roads Act 2007**.

That the Respondent has no power under the Act No. 2 of 2007 to change any boundary . He further avered that the respondent has no authority to act as it did and therefore sought for the orders .

The Respondent through **Lawi Kariuki Mangu, Roads Officer** filed a Replying affidavit . The Respondent avered that it is involved in the construction of a project known as **E1551** from Kwara Blue Post Hotel. That the office instructed **James Muraya** to conduct a survey and he realized that the plaintiff's proprty had been built on the raod reserve. That only the land Registrar can determine the issue of boundaries as provided for by the law.

In that regard the requested the land Registrar to issue a determination on the boundaries and after the boundaries were detrmind, the County Council Surveyor conducted a survey and established that the said property had encroached on the raod reserve. Respondent further avered that the application herein is vexatious, frivolous and an abuse of the Court process as the applicant has not attached any documents to justify that the property does not encroach on the road reserve.

That the alleged loss to the Plaintiff/ Applicant can be adequately compensated. The parties agreed to dispose off the application by way of written submissions where the parties repeated their averments in the ***Supporting Affidavits*** and the ***Replying Affidavit***.

I have considered the application in totality and the annexures therein. It is evident that the applicant herein ***Henry D N Kariuki*** has been allottee of the slaughter house plot from ***County Council of Thika since 1960's***. The Applicant has now changed the use of the building which is now known as ***Kyuso Bar and Restaurant*** . There are various licences attached in the application to support that .

There is also no doubt that the Respondent is engaged in a Road Construction project known as ***E1551 from Kirwara to Blue Post Hotel*** and during the survey of the said Road, it was alleged that the plot in question has encroached on the road reserve. The Road was earmarked for demolition is evident by the Applicant annexure exhibit ***HDKVI***.

It is also evident that the Respondent is of the view that the Applicant has encroached on the Road Reserve and was justified in giving the Applicant notice to demolish the building.

In issuance of Interim Orders , the Court is guided by the Principles laid down in the case of ***Giella Versus Cassman Limited (1973) EA 358***.

Firstly, the applicant has to demonstrate that he has a ***Prima-Facie*** case with probability of success.

Secondly, that the Applicant will suffer irreparable loss which cannot be adequately compensated by damages.

Thridly, if the Court is in doubt , it will decide the matter on a balance of convinience.

The Plaintiff herein is the allottee of the suit property and has been using it since 1960's the Respondent has alleged that Applicant's house has encroached on the Road Reserve. That is evidence that can be determined by witnesses in court.

Since applicant has been in occupation of the Land since 1960's . I find that he has a ***prima-facie case with probability of success***.

Applicant is also running his business in the said premises. If the same is demolished , I am convinced that he will suffer irreparable loss which may not adequently be compensated by damages .

I find that the applicant herein has satisfied the Court that this is a case that deserve granting of ***Interim Orders***.

Consequently, the Court grants temporary Restraining Order against the Respondent / Defendant by their agent, servants , employes or anybodyelse claiming through them from demolishing ,alienating, or in any other manner interfering with the Plaintiff's ownership of LOC 1/ KIRWARA /275/30 till the hearing and determination of this suit.

However, the Court take into account that the road under construction is for the benefit of the general public. The issue of the boundaries need to be solved the soonest possible.

In that regard, the Applicant is ordered to set this matter down for hearing within a period of 12 months from the date of this ruling. Failure to do so, the Orders of this Court will stand vacated.

Costs of the application be in the cause.

Dated, signed and delivered this 17th day of May, 2013

L.N. GACHERU

JUDGE

In the Presence of:-

.....For the Plaintiff

.....For the Defendant

Anne Court Clerk

L.N. GACHERU

JUDGE.