

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 65 Of 2013

CHESTERTON PROPERTIES LIMITED. PLAINTIFF

V E R S U S

ANASTACIA MUSILI & 17 OTHERSDEFENDANTS

RULING

[1] The applicant filed this notice of motion and prayed for orders that the defendants by themselves, their servants and/or agents be restrained temporarily from erecting building, constructing, developing any structure on **plot no. 7/V/MN** pending the inter parte hearing and determination of this suit.

The applicant avers that it is the registered proprietor of the suit property. That the defendants are squatters and are attempting to build a school and that their activities have neither been sanctioned by the plaintiff nor the Mombasa Municipal Council.

The Managing Director of the plaintiff company annexed the registration certificate and the document of title of the suit property in the name of the applicant. It also annexed photographs showing the temporary structures being built by the respondents.

[2] The respondents in their replying affidavit admitted Title Deed CR 1533/1 is in the name of the applicant/plaintiff. The defendants argued that the photographs attached were not taken on the suit property. They argued that the issue of trespass on **plot no. 7/V/MN** is the subject of judicial review proceedings in High Court Civil case No. 226 of 2010. They stated that some respondents have been on the land for a period of over 12 years and that the issue of trespass does not arise.

[3] I have perused the submissions of the applicants and the respondents. The applicants have demonstrated that they are registered owners of the suit premises. This fact has not been disputed by the respondents. They have annexed photographs showing the structures under construction by the respondents. They state on oath that they have reported this trespass several times to the police. The respondents state that the photographs were not taken on the suit land. They have not annexed their own photographs to show long occupation of the suit land at all. One would have expected people with occupation for a period alleged to be over 12 years to at least show some evidence of such occupation. From the photographs annexed by the applicants one can see an attempt to construct structures by the respondents.

[4] The purpose of an injunction is the need to protect

and preserve the status quo existing at the time of the application. This status quo can only best be protected by an injunction pending the hearing of the suit. The balance of convenience clearly favours the applicant. If the state of construction is allowed to continue and public structures like schools are build on private land when the suit is pending in Court the plaintiff/applicant who is the registered owner will loose greatly. It is important that an injunction do issue pending the hearing of the suit on merits.

The application dated 18th April 2013 is allowed as prayed.

Dated and delivered in open Court at Mombasa this 18th day of October, 2013.

S. N. MUKUNYA

JUDGE

18.10.2013

In the presence of:

Umalla Advocate for the plaintiff

Ombonge Advocate for the defendants