



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ENVIRONMENTAL & LAND CASE 31 OF 2012**

**NJOROGE MBUGUA.....1<sup>ST</sup>**  
**PLAINTIFF**

**ESTHER WANJIRU GACIGO.....2<sup>ND</sup>**  
**PLAINTIFF**

**VERSUS**

**ANDREW MACHARIA.....1<sup>ST</sup>**  
**DEFENDANT**

**CITY COUNCIL OF NAIROBI.....2<sup>ND</sup>**  
**DEFENDANT**

**RULING**

By a Notice of Motion application dated 19/1/2012, the Plaintiffs seek an orders that;

1. A temporary injunction be granted restraining the Defendants whether by themselves, their servants and/or agents or otherwise howsoever from doing the following acts or any of them, that is to say, from interfering with rights of possession of the Plaintiffs, letting, encroaching on, entering, using, trespassing, alienating, making any or any further constructions on the Plaintiff’s property L.R No. 36/V/16 in No. 6A Section 1 Eastleigh or otherwise howsoever, interfering with the Plaintiffs’ ownership of L.R No. 36/V/16 IN No. 6A Section 1 Eastleigh pending the hearing and final determination of this suit.
2. That costs of this application be provided for.

The application is premised on grounds that the Plaintiffs, together with others who are deceased are owners of the said parcel of land, and that the Defendants have encroached on the land and have erected a Bill Board with notices for the residents including the Plaintiffs to vacate the property, to pave way for the construction of a Social Hall.

The application is supported by a Supporting Affidavit dated 19/1/2012, sworn by 2<sup>nd</sup> Plaintiff. The 2<sup>nd</sup> Plaintiff depones that the Plaintiffs together with others, now deceased are owners of L.R No. 36/V/16 IN No. 6A Section 1 Eastleigh through an indenture dated 30/12/1970 registered in Volume N5 Folio 304/9(suit property). That the Plaintiffs obtained approval from the 2<sup>nd</sup> Defendant to sub-divide the property which approval was granted on 25/7/1991. She deponed further that towards end of 2011 beginning of 2012, the 2<sup>nd</sup> Defendant erected a Bill Board containing notices asking residents, who include the Plaintiffs, to immediately vacate the property as the same is a proposed site for a Social Hall.

The Plaintiffs pray that unless restrained by this Honorable Court, the Defendants will continue with their wrongful acts that of invading and evicting them from their property.

A Replying Affidavit dated 21/2/2012 sworn by Kich John Ayiecho was filed on 22/2/2012. The deponent stated that he is a Chief Valuer of the Respondent. The Replying Affidavit has no averments other than denials of the contents of the Plaintiffs' application.

I have considered oral submissions made by the Plaintiffs' advocate. The Defendants' advocate failed to attend the hearing though served. The Applicants have annexed a copy of an indenture registered on 16/6/1971 and a copy of sub-division of the property in their Affidavit which prove that they own the property. The defendants' actions on the suit have not been justified and neither does the Replying Affidavit shade light on why the notice was put up. The Plaintiffs have demonstrated that they have *prima facie* case with a probability of success. They have shown that they stand to suffer irreparable loss should the Defendants continue with their unjustified acts. The balance of convenience tilts in their favour.

I therefore grant prayer 3, that a temporary injunction be granted restraining the Defendants whether by themselves, their servants and/or agents or otherwise howsoever from doing the following acts or any of them, that is to say, from interfering with rights of possession of the Plaintiffs, letting, encroaching on, entering, using, trespassing, alienating, making any or any further constructions on the Plaintiff's property L.R No. 36/V/16 in No. 6A Section 1 Eastleigh or otherwise howsoever, interfering with the Plaintiffs' ownership of L.R No. 36/V/16 IN No. 6A Section 1 Eastleigh pending the hearing and final determination of this suit. Costs to the Plaintiff.

Orders accordingly.

Dated, signed and delivered this **19<sup>th</sup>** day of **July** 2012

**R. OUGO**  
**JUDGE**

In the Presence of:-

.....For the Applicants

.....For the Respondents

Kabiru

Court Clerk