



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT NAKURU

Civil Suit 37 of 2012

IN THE MATTER OF APPLICATION BY THE REGISTERED PROPRIETOR OF PARCEL NOS.NAKURU/MUNICIPALITY BLOCK 2/131 AND NAKURU/MUNICIPALITY BLOCK 2/104 FOR RESTRAINING ORDERS AGAINST THE TENANTS THEREIN AND TO ALLOW PEACEFUL CONSTRUCTION AND IMPROVEMENT OF THE ESTATE BY THE LANDLORD BY ERECTING A FENCE AND CONSTRUCTING A GUARD HOUSE THEREIN

BETWEEN

LOCAL AUTHORITY PENSION TRUST LTD.....APPLICANT/PLAINTIFF

VERSUS

JAMES KIONI.....1ST RESPONDENT/DEFENDANT

SUSAN YEKO KIOVI.....2ND RESPONDENT/DEFENDANT

PETER KIMANI NGARUIYA.....3RD RESPONDENT/DEFENDANT

CHRISTOPHER NJOROGE.....4TH RESPONDENT/DEFENDANT

FREDRICK MUTANGA MUTUA.....5TH RESPONDENT/DEFENDANT

AMINA WANJIKU ABDALLA.....6TH RESPONDENT/DEFENDANT

DEKAN YUSUF.....7TH RESPONDENT/DEFENDANT

MORRIS WERE OWITI8TH RESPONDENT/DEFENDANT

BENARD M. MUKENYE9TH RESPONDENT/DEFENDANT

GRACE MUKAMI NJUGUNA10TH RESPONDENT/DEFENDANT

ALICE WALELA MUSOMBI.....11TH RESPONDENT/DEFENDANT

HILDA WANJIKU NGANGA.....12TH RESPONDENT/DEFENDANT

PATRICK NJENGA.....13TH RESPONDENT/DEFENDANT

JANE E.A. DHOCHI.....	14 TH	RESPONDENT/DEFENDANT
SIMEON K. KOSKEI.....	15 TH	RESPONDENT/DEFENDANT
MARTHA W. KIMANI.....	16 TH	RESPONDENT/DEFENDANT
APOLLO O. MBOTE.....	17 TH	RESPONDENT/DEFENDANT
ESTHER NYOKABI KIMAKU.....	18 TH	RESPONDENT/DEFENDANT
GRACE MUTHONI MUIKIA.....	19 TH	RESPONDENT/DEFENDANT
ABDI SALAAM M.....	20 TH	RESPONDENT/DEFENDANT
RONALD PWOKA MARANGU.....	21 ST	RESPONDENT/DEFENDANT
WYCLIFFE OMBOYI LIKARA.....	22 ND	RESPONDENT/DEFENDANT
JOHN KILINGA.....	23 RD	RESPONDENT/DEFENDANT
KENNETH WABUNGU.....	24 TH	RESPONDENT/DEFENDANT
JOHN JORUA WAMBUGU.....	25 TH	RESPONDENT/DEFENDANT
JONAH GACHERU.....	26 TH	RESPONDENT/DEFENDANT
HESBON ALUOCH.....	27 TH	RESPONDENT/DEFENDANT
MONICA MUGURE.....	28 TH	RESPONDENT/DEFENDANT
MARY IGUNZA.....	29 TH	RESPONDENT/DEFENDANT
DANIEL ONYANGO.....	30 TH	RESPONDENT/DEFENDANT
CHRISTINE KHATALI INGUTIA.....	31 ST	RESPONDENT/DEFENDANT
FRANCIS MAHENIA GICHUKU.....	32 ND	RESPONDENT/DEFENDANT

RULING

It is common ground that the applicant is the registered owner of NAKURU MUNICIPALITY BLOCK 2/131 and BLOCK 2/104 more particularly known as Mohammed Kahero Estates “A” and “B”, “C” and “D”, having had the same transferred to them by the previous owners, the Municipal Council of Nakuru.

The respondents have been tenants in those properties prior to the aforesaid transfer. The applicant has instituted this originating summons and at the same time seeks in the motion dated 15th February, 2012 that the respondents be restrained from interfering with or blocking the contractors engaged by the applicants to fence the premises. They also pray that the court declares that they are entitled to deal with the suit property in any way they deem appropriate particularly to improve it without the hindrance of the respondents; that the respondents and their servants or agents be evicted from the suit property should they obstruct the contractors from carrying on with the fencing; that the Officer Commanding Police

Division, Nakuru and the Officer Commanding Bondeni Police Station do assist in peaceful enforcement of the court order.

The applicant contends that they have contracted two companies to construct a chain link wire fence around the properties in question as well as a guard house for the security of the tenants occupying the premises, but this has been resisted by the tenants (the respondents) who have ejected the contractors from the site. The applicants have averred further that they stand to suffer loss should the works fail to proceed as the tenders were already awarded to the two contractors in the sum of Kshs.3,916,824/=. The respondents have filed both a notice of preliminary objection and a replying affidavit. It is their contention that prior to the transfer of the premises to the applicants, they (the respondents) have, through their own organization, erected an off-cut and kei-applefence around the premises; that they have engaged a guard, planted trees and erected steel doors on the houses to enhance security.

For them, the issue of security of the premises has been addressed and all they need is for the applicant to repair and renovate the premises. But should they insist on erecting a fence, the respondents demand a wall around the premises instead of a chain link fence, and finally that it will be in the interest of justice for the applicant to discuss this matter further with the respondents.

A temporary injunction will issue if the court is satisfied that there is *prima facie* case with a probability of success; if the applicant will suffer loss which cannot adequately be compensated in damages and where the court is in doubt, the matter will be decided on a balance of convenience.

See **Geilla Vs. Cassman Brown & Co. Ltd.** (1973) EA 358 .

Order 40 rule 2(1) and (2) of the **Civil Procedures Rules**, under which this application is brought provides that an injunction will be issued to restrain a defendant from committing a breach of contract. No doubt, the respondents are tenants of the applicant.

Although the leases in respect of the tenancies are not exhibited in this application, it is an implied term of any lease that the landlord upon reasonable notice to the tenants can inspect the leased premises and carry out outside renovations and other improvements. That is a right that no tenant can challenge or seek to curtail.

The grounds advanced by the respondents for opposing the construction are without merit. The applicant is at liberty to put the fence that suits it. Although there is no obligation to do so, they may consider the invitation by the respondents to discuss how to avoid damage to the trees and the kei-apple as the contractors embark on the fencing.

In the result, there will be an order of temporary injunction in terms of paragraph 2 of the application. Prayers 4 and 5 are not available at this stage.

I award costs to the applicant

Dated, Signed and Delivered at Nakuru this 3rd day of August, 2012.

W. OUKO

JUDGE