



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS

Petition 388 of 2012

COUNCILLOR PETER MAINA KANGARA.....PETITIONER

AND

THE ATTORNEY GENERAL1ST RESPONDENT

CITY COUNCIL OF NAIROBI2ND RESPONDENT

COMMISSIONER OF LANDS.....3RD RESPONDENT

JANDU INVESTMENTS (KENYA) LIMITED.....4TH RESPONDENT

RULING

1. The petitioner, in the petition dated 3rd September 2012 alleges that the respondents have threatened to demolish the houseS and other structures of the residents of Lunga Lunga slums particularly those resident in the suit property, **LR No. 209/9633**, Nairobi. He alleges that the threat of eviction and destruction will leave thousands of families homeless.

2. On 5th September 2012 Hon. Justice Mabeya issued the following order upon application of the petitioner *ex-parte*;

That temporary conservatory orders be and are hereby granted restraining the respondents by themselves, their agents, servants or howsoever from evicting, removing, destroying, demolishing and or doing anything prejudicial to all persons living, working and or doing business at Lunga Lunga slums in the Industrial Area and more particularly LR No. 209/9633, Nairobi until interpartes hearing.

3. When the parties appeared before me on 24th September 2012, Mr Kanjama, counsel for the Jandu Investments (Kenya) Limited, the registered owner of **LR No. 209/9633**, the suit property informed the court that his client was not averse to injunctive relief. He also stated that it was not the intention of the 4th respondent to evict anyone but the court ought to take into account the fact that there were efforts to resolve the squatter problem. Such efforts were being made by the provincial administration and the squatters themselves as evidenced by the minutes of the meetings held and annexed to the replying affidavit of Nilesh Devani, a director of Jandu Limited, sworn on 21st September 2012 and the further affidavit of Veronica Wangari sworn on 21st September 2012.

4. Mr Muhia, counsel for the petitioner, noted that his client, the area councillor, was concerned that the process which is ongoing would be high jacked by landlords to the exclusion of the real squatters and that there was a real possibility that the property could be alienated. In the circumstances, he requested the court take this factor into account.

5. I have considered the respective positions of the matter and I note that neither party is averse to a negotiated settlement that takes into account the issues raised by all parties. In my view, it is proper that the process that began under the tutelage of the provincial administration should go on while the proceedings continue and it is not inconsistent with the provisions of the Bill of Rights to permit parties to seek an amicable settlement particularly where the right to access to housing protected under **Article 43(1)(b)** is sought to be enforced.

6. Taking all the facts into account the Notice of Motion dated 2nd September 2012 is allowed to the following extent;

(1) The respondents, their servants and agents are restrained from selling, subdividing, transferring or in any way dealing with LR No. 209/9633 Nairobi pending the hearing and determination of the petition and or further orders of the court.

(2) The respondents are also restrained from evicting or removing any person or demolishing any property howsoever on LR No. 209/9633, Nairobi pending the hearing and determination of the petition or until further orders of the court.

(3) Parties be at liberty to apply for further or other orders.

(4) Costs shall be in the petition.

For the avoidance of doubt, the 4th respondent and the provincial administration shall continue with their efforts to seek an amicable solution to the issues in dispute including conducting the necessary ground surveys and shall take any necessary steps not inconsistent with the order hereinabove.

DATED and DELIVERED at NAIROBI this 27th day of September 2012

D.S. MAJANJA

JUDGE

Mr Muhia instructed by S. M Muhia and Company Advocates for the petitioner.

Mr Moimbo, Litigation Counsel, instructed by the State Law Office for the 1st and 3rd respondent.

Mr Murage, Advocate instructed by the 2nd respondent.

Mr Kanjama instructed by Muma and Kanjama Advocates for the 4th respondent.