



REPUBLIC OF KENYA



KENYA LAW
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Colti Construction Co Ltd & another v Muraguri & 3 others (Environment & Land Case E012 of 2021) [2022] KEELC 3819 (KLR) (16 June 2022) (Ruling)

Neutral citation: [2022] KEELC 3819 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE E012 OF 2021**

**YM ANGIMA, J
JUNE 16, 2022**

BETWEEN

COLTI CONSTRUCTION CO LTD 1ST PLAINTIFF

EDWARD MUIGAI KABUCHO 2ND PLAINTIFF

AND

JOHN MWANGI MURAGURI 1ST DEFENDANT

ANTONY HENIA MAINA 2ND DEFENDANT

THE COUNTY PHYSICAL PLANNER, LAIKIPIA COUNTY . 3RD DEFENDANT

**THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR
INFRASTRUCTURE, LAND & URBAN DEVELOPMENT LAIKIPIA COUNTY
GOVERNMENT 4TH DEFENDANT**

RULING

1. By notice of motion dated April 9, 2021 grounded upon sections 1A, 1B, 3A & 63(e) of the [Civil Procedure Act](#) (Cap 21), section 25 of the [Land Registration Act](#), Order 51, Order 40 rules 1, 2, 3 & 4 of the [Civil Procedure Rules 2010](#), article 40 of the [Constitution](#) of Kenya, and any other enabling provisions of the law, the plaintiffs sought the following orders:
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of the instant suit, this honourable court be pleased to grant an interim order of temporary injunction restraining the 1st and 2nd defendants/respondents, either by themselves, their agents, servants and/or any persons acting on their (defendants) instructions,



from further constructing the buildings and/or houses on their parcels of land being LR Nos Nyahururu Municipality Block 8/701 and Nyahururu Municipality Block 8/398 respectively.

- d. That the OCS Nyahururu Police Station be directed and/or ordered to enforce, implement and/or otherwise oversee compliance with the orders of this honourable court.
 - e. That the costs of this application be provided for
2. The said application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by John Gitau Njuguna on April 9, 2021 and the exhibits thereto. The plaintiffs contended that the 1st and 2nd defendants who were proprietors of Title Nos LR No Nyahururu Municipality Block 8/701 and 398 respectively had embarked on some illegal construction of buildings and structures thereon in total disregard of land use zoning intended for the area. It was contended that whereas the area in question was zoned for single private dwelling units (excluding the guest house) the 1st and 2nd defendants had commenced constructing structures intended for business purposes such as a hotel and multi-dwelling residential houses.
 3. The plaintiffs contended that they were not aware of any change of user process having been undertaken by the defendants. They further contended that the intended development if allowed to proceed would compromise their privacy and cause discomfort and inconvenience to them and their families hence the application.
 4. The record shows that during the pendency of the application the plaintiffs withdrew the suit against the 1st defendant but opted to proceed against the rest of the defendants. The 2nd defendant filed a replying affidavit sworn on June 4, 2021 in opposition to the application. The 2nd defendant stated that as the previous owner of parcel 389 he applied for change of user from single dwelling residential unit to multi-dwelling residential units in 2019 after following due process. It was contended that the application for change of user was published in the Daily Nation newspaper of November 8, 2019 inviting objections and comments thereon.
 5. It was the 2nd defendant's contention that there being no objection to the application the same was duly approved by the County Government of Laikipia under the [*Physical and Land Use Planning Act, 2019*](#). He stated that he also obtained approval of his building plans from the planning authority in 2020 after which he transferred parcel 398 to a company known as Cigma Business Centre Ltd of which he was one of the directors.
 6. When the application was listed for inter partes hearing it was directed that it shall be canvassed through written submissions. The parties were granted timelines within which to file and exchange their submissions. The record shows that the 2nd defendant filed his submissions on March 18, 2022 whereas the plaintiffs had not filed theirs by the time of preparation of the ruling. The 3rd and 4th defendants did not file any responses or submissions to the application.
 7. The court has considered the pleadings, application, affidavits and material on record. The court is of opinion that the key issue for determination is whether or not the plaintiffs have made out a case for the grant of the interim injunction sought against the 2nd defendant. It is evident from the plaintiffs' application that it is predicated upon the alleged violation of the zoning regulations. Whereas the 2nd defendant's title may have been granted for a single private residential house, the material on record shows that there was a change of user undertaken between 2019 and 2020 through which the 2nd defendant was allowed to put up multi-dwelling residential units. There is no material on record to



demonstrate that the plaintiffs have ever challenged the said change of user through the appropriate organs set up under the applicable law. There is also no evidence that there exists any other zoning regulations superior to the *Physical and Land Use Planning Act, 2019* which would override the change of user granted by the County Government of Laikipia.

8. The court is far from satisfied that the plaintiffs have demonstrated the first principle for the grant of an interim injunction. The court is not satisfied that the plaintiffs have made out a *prima facie* case with a probability of success against the 2nd defendant. Mere discomfort or inconvenience which comes with any new development cannot be a basis for granting an interim injunction. There has to be prima facie evidence that the plaintiffs' legal rights have been or are about to be violated by the defendants' actions. In the circumstances, it is not necessary to consider the other two principles for the grant of an injunction since the plaintiffs have failed to satisfy the first principle.
9. The upshot of the foregoing is that the court is not satisfied that the plaintiffs are entitled to their interim orders sought. Accordingly, the notice of motion dated April 9, 2021 is hereby dismissed in its entirety with costs to the 2nd defendant.

It is so decided.

RULING DATED AND SIGNED AT NYAHURURU AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 16TH DAY OF JUNE., 2022.

In the presence of:

Mr. Mathea for the Plaintiffs

Mr. Nderitu Komu for the 2nd Defendant

N/A for the 3rd and 4th Defendants

C/A - Caro

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Y. M. ANGIMA

JUDGE

