



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 439 of 2012

KENNETH NJOGU MBUGUA.....PLAINTIFF

VERSUS

ANTONY OMBOK..... 1ST DEFENDANT

THE PATRON UMOJA 111 HOUSING SETTLEMENT SCHEME.....2ND DEFENDANT

RULING

The plaintiff/applicant hereinafter referred to as the applicant has filed a Notice of Motion dated 24/7/12, under section 1A, 3A and 63e of the Civil Procedure Act, Cap.21 of the Laws of Kenya, Order 40 rule 1&4, Order 51 rule 1&3 of the Civil Procedure rules and all other enabling provisions of the law, seeking the following orders;-

i. Spent.

ii. That this honourable court be pleased to issue a temporary injunction order restraining the respondents/defendants whether acting by themselves or through their agents, servants or workmen from doing any of the following acts, that is to say trespassing, wasting, damaging, alienation, removal, disposition, disposing off, selling, undertaking constructions thereon, parting with possession or interference or in any other manner whatsoever dealing or effecting transactions inconsistent with the plaintiff's rights or to their prejudice in all that parcel of Land known as UMOJA III HOUSING SETTLEMENT SCHEME PLOT NO 458; 459;485 AND 486 situate at Umoja Nairobi (“the suit properties”) pending the hearing and determination of this suit.

iii. That this honourable court be pleased to issue a temporary injunction order restraining the respondents/defendants whether acting by themselves or through their agents, servants or workmen from doing any of the following acts, that is to say trespassing, wasting, damaging, alienation, removal, disposition, disposing off, selling, undertaking constructions thereon, parting with possession or interference or in any other manner whatsoever dealing or effecting transactions inconsistent with the plaintiff's rights or to their prejudice in all that parcel of Land known as UMOJA III HOUSING SETTLEMENT SCHEME PLOT NO 458; 459;485 AND 486 situate at Umoja Nairobi (“the suit properties”) pending inter-partes hearing the application.

iv. That costs of this application be borne by the defendants in any event.

The application is based on the following grounds;

i. That applicant is a bonafide the registered owner of all those premises known as Umoja III housing settlement scheme plot No.458, 459; 485 and 486 situate at Umoja Nairobi (“the suit properties”) to the

exclusion of any other persons.

ii. That the defendants/respondents are in the process of laying a foundation for construction of illegal structures and or buildings on the applicant property without any colour of justification.

iii. That further to the above the defendants/respondents have caused the digging, hallowing out, ploughing ground-breaking works and or excavation on the suit premises without authority of the plaintiffs whom they are well aware that they have acquired interest and rights over the suit property which rights have not be served and therefore indefeasible.

iv. That despite attempts to reach the defendants with a view of sorting out the differences, the plaintiff has been unsuccessful and only the court now can come to his aid.

v. That unless injunctive orders are issued forthwith, the plaintiff will suffer irreparable loss and damage should the defendants continue with the intended alienation and interference with the suit property.

Kennedy Njogu Mbugua the applicant filed a supporting affidavit dated 24th July; 2012. He avers as follows: That he is the registered proprietor and or legal owner of land parcel described as Umoja III Housing Settlement Scheme Plot No 458, 459 and 486 situate at Umoja Nairobi. After purchasing the property he was issued with respective plot identification certificates and he subsequently made payment to the housing scheme as demanded being process fees, foundation fees among other outgoings demanded by the housing scheme from time to time. That since then he has continued to utilize the said property on the strength of ownership rights acquiring from the title documents and the subsequent fulfillment of the collateral conditions. That he is the legal owner of suit land Umoja III Housing settlement scheme plot No. 458; 459; 485 and 486 situate at Umoja Nairobi. That sometime this year certain strange persons embarked on the said land and without any authority started to interfere with the subject land to his detriment. That his ownership rights over the subject property remain indefeasible to the extent that other third parties cannot interfere with his title. That he seeks the protection of this Court to conserve and protect the subject property from being alienated by the respondents and he stands to suffer serious prejudice for reasons that, the property in question being commercial plot he has heavily invested in the same and he stand to suffer great loss, that he has even obtained the necessary consent to develop and intend to carry out commercial investments therein, that he has great attachment to the said property both financially and sentimental. That the defendants are in the process of laying a foundation and unless the court intervenes to restore the status quo by granting an interim relief the applicant is bound to loose irreparably.

The respondents though served did not attend Court neither did they oppose the application. The applicant has attached certificates issued by Umoja III Housing Settlement Scheme for plots No. 458, 459, 485 and 486 which are in his name together with receipts of payments made to Umoja by him on the 13th April 2006 and 28th March 2006. The said documents show that he has a beneficial interest in the plots the subject matter of this suit. In the plaintiff filed dated 24th July 2012, the applicant claims to be the registered owner and is entitled to possession. He avers that the 1st defendant has trespassed and wrongfully occupied the said portion of the said suit property and he seeks the Court's protection. From what is annexed the applicant has shown that he has a prima facie case with a probability of success (Geilla Vs. Cassman Brown E. A 1973). At paragraph 10 of his affidavit he explains the prejudice he will suffer if the injunctive orders are not granted. So far he has shown that the balance of convenience tilts in his favour. I therefore grant prayer 2 as follows; a temporary injunction order shall issue restraining the respondents/defendants whether acting by themselves or through their agents, servants or workmen from trespassing, wasting, damaging, alienation, removal, disposition, disposing off, selling, undertaking constructions thereon, parting with possession or interference or in any other manner whatsoever dealing or effecting transactions inconsistent with the plaintiff's rights or to their prejudice in all that parcel of Land known as UMOJA III HOUSING SETTLEMENT SCHEME PLOT NO 458; 459; 485 AND 486 situate at Umoja Nairobi ("the suit properties") pending the hearing and determination of this suit. Cost shall be in the cause

Orders accordingly

Dated, signed and delivered this 13th Day of November 2012

**R. OUGO
JUDGE**

In the Presence of:-

..... For the plaintiff/applicant

..... For the 1st & 2nd defendants/respondents

..... Court Clerk