



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**LAND AND ENVIRONMENTAL LAW DIVISION**

**CIVIL SUIT (ELC) NO.151 OF 2011**

**STRAMAN E.A. LIMITED.....PLAINTIFF/APPLICANT**

**VERSUS**

**CITY COUNCIL OF NAIROBI.....DEFENDANT/RESPONDENT**

**RULING**

1. Straman E.A Limited (hereinafter referred to as the applicant), brought this suit against City Council of Nairobi (hereinafter referred to as the respondent). In the plaint which was filed on 7<sup>th</sup> April, 2011, the applicant seeks the following orders:

(i) An injunction be issued to restrain the defendant by itself, its servants and/or agents from alienating, occupying, using, abusing, developing, transforming and/or from in any manner whatsoever or howsoever dealing with and/or interfering with all that parcel of land/property known as land reference No.209/11148 Rangwe Road, Industrial Area, Nairobi.

(ii) The defendant be ordered to demolish and/or pull down all the structures on the suit premises and evict all third party persons therein and thereby render vacant possession of land reference No.209/11148 Rangwe Road, Industrial Area to the plaintiff free from any occupation within a period of thirty (30) days from the date of this honourable court's orders and/or on such a date as the honourable court may determine.

(iii) Damages for loss of business at the rate of Kenya Shillings one hundred and five thousand (Kshs.105,000) per day from the 22<sup>nd</sup> June 2010 until payment in full.

(iv) General damages

(v) *Mesne* profits from June, 2010 until payment in full

(vi) Costs and interests

(vii) Any other relief that this court may deem necessary to grant in the circumstances of this matter.

2. Filed contemporaneously with the plaint is a notice of motion brought under Sections 1A, 1B, 3A, 63(c) & (e) of the Civil Procedure Act, and Order 40 Rules 1 and 2 of the Civil Procedure Rules 2010. The applicant seeks *inter alia* interlocutory orders as follows:

· That a temporary injunction do issue to restrain the defendant by itself its servants, and or agents, from alienating, occupying, using, developing, transforming, and or from any manner whatsoever or howsoever, dealing with and or interfering with all that parcel of land known as Land Reference

No.209/11148 Rangwe Road, Industrial Area, Nairobi pending the hearing and determination of this suit.

· Pending the hearing and determination of this suit, a mandatory injunction be issued compelling the defendant to demolish all the structures situate in the suit premises herein, namely, Land reference number No.209/11148, Rangwe Road, Industrial Area, Nairobi and evict all third party persons therein so as to render thereby vacant possession of the said suit premises.

3. The application is also supported by an affidavit sworn by Zakayo Karimi a director of the plaintiff. In short, the facts upon which the application is anchored are as follows:

4. The plaintiff is the registered owner of the suit property having acquired the property at an auction conducted by auctioneers in April, 2009. The auction was conducted on behalf of the respondent following a vesting order in Nairobi RMCC No.49 of 2007. The suit was between the respondent and a rate defaulter Messrs Aviation Fuel Supplies Company Ltd. It was a term of the auction sale that the suit premises would be given in vacant possession free from any encumbrances. However the applicant is now unable to develop the property due to encroachments by 3<sup>rd</sup> parties. The applicant pleads to the respondent to evict the 3<sup>rd</sup> parties have not borne any fruits.

5. An enforcement notice issued by the respondent has not been enforced as some of the respondents officers claim that the suit property is a public utility land. As a result the defendant carried out internal investigation which confirmed that the applicant is the lawful owner of the suit property. The applicant is aggrieved that it is unable to enjoy quiet possession of the suit premises. It maintains that the respondents' actions are illegal, high handed, oppressive and wrongful.

6. There was no replying affidavit filed on behalf of the respondents. However Mr. Mogusu who appeared for the respondents urged the court to reject the application, maintaining that no cause of action had been disclosed against the respondents. Mr. Mogusu argued that since it is not disputed that the plaintiff owns the suit property and has a title deed, it is the obligation of the plaintiff to pursue the third parties who have encroached into its property.

7. Upon considering this application and noting that there has been no reply from the respondent, which is evident that the applicant's claim to the suit property has not been challenged. The applicant has produced documents confirming that it actually purchased the suit property from the respondent pursuant to a vesting order in the RM's Civil Suit No.49 of 2009. It would appear that there were attempts to deprive the applicant of the suit property through allegation that the suit property was a public utility property. Nonetheless, these allegations were found to be baseless. Thus, the respondent has no right to interfere with the applicant's quiet possession.

8. Accordingly, it is only fair that an interim order do issue restraining the respondent, its servants or agents from alienating, occupying, developing, or in any manner interfering with the applicant's quiet enjoyment of the suit property.

9. As regards the prayer for an order of mandatory injunction compelling the respondent to demolish all the structures situated in the suit property, the applicant has not demonstrated its allegations that the respondent is the one who has allowed the 3<sup>rd</sup> parties to enter into the suit property or that it has allowed the 3<sup>rd</sup> parties to build illegal structures on the suit property. I concur with the advocate for the respondent that the applicant must directly pursue the third parties who are on the suit property.

10. For the above reasons, this application succeeds only to the extent of issuing a temporary order of injunction in terms of prayer (iii) only. The costs of the application shall be in the cause.

**Dated and delivered this 14<sup>th</sup> day of June, 2011**

**H. M. OKWENGU**

**JUDGE**

In open court in the absence of  
Advocate for the plaintiff  
Advocate for the defendant