



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**ELC NO.305 OF 2010**

The plaintiffs brought this suit against the defendants in respect of a parcel of land known as Title No. **NAIROBI/BLOCK 62/1238**. It is the plaintiffs' case that the said land is public land but the 1<sup>st</sup> and 2<sup>nd</sup> defendants have claimed ownership thereof fenced the same and commenced construction.

The plaintiffs have tried to settle the matter with the 3<sup>rd</sup> and 4<sup>th</sup> defendants in vain. It is now their case that an order should be issued to restrain the 1<sup>st</sup> and 2<sup>nd</sup> defendants from constructing or in any manner dealing with the said property. The plaintiffs own property in the adjoined plots which have been compromised as a result of the development taking place in the disputed property. It is their case that the actions of the 1<sup>st</sup> and 2<sup>nd</sup> defendants are illegal, null and void as they amount to land grabbing. Their interests in the said parcel of land has caused them inconvenience and irreparable damage. They have therefore moved the court for injunction orders under Order 39 Rules 1 and 2 of the Civil Procedure Rules and Section 1a, a,b and 3(a) of the Civil procedure Act to restrain the 1<sup>st</sup> and 2<sup>nd</sup> defendant from construction or in any manner dealing with, or interfering with title No. **NAIROBI/BLOCK 62/1238** pending the hearing and determination of this suit.

The application is based on the grounds set out on the face of the application to with

- (a) The subject suit property involves public land.
- b) The said construction has completely locked access to the 1<sup>st</sup> plaintiffs.
- c) The said construction has completely blocked access to the 1<sup>st</sup> plaintiffs' property.
- d) The construction has greatly interfered with the plaintiffs' usage of other public facility adjoining the suit property resulting to irreparable loss of right to enjoy their properties.

The application is opposed and there are replying affidavit sworn by the 1<sup>st</sup> defendants and also submissions filed on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

It is the submission on behalf of the 3<sup>rd</sup> respondent that is instructive. The 3<sup>rd</sup> respondent is the City Council of Nairobi. In the submission the 3<sup>rd</sup> respondent says that the Land is registered in its name but linked to Stephen Nduati Muhinja the 1<sup>st</sup> defendant respondent. However there is a title a copy of the title annexed to the affidavit of Mr. Wilkis Obiero Otieno showing that he is the registered owner of the said lease. The said lease does not show that the 3<sup>rd</sup> defendant consented to the transfer from the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant.

There is therefore a very serious triable issue in respect of the ownership of the said property. It has been submitted that the plaintiffs may not have the *locus standi* to institute this proceedings. With respect I disagree because Section 22 and 23 of the Constitution confer such rights. The only consideration at this stage is whether or not the plaintiffs have established a *prima facie* case with a probability of success and if the order is not granted they are likely to suffer irreparable loss. If the court is in doubt, it shall decide the matter on a balance of convenience.

Going by the contested positions of the parties herein I believe the best order that commences itself is the preservation of the subject matter pending the hearing of the main suit. That is to say the defendants are hereby restrained from dealing with the subject matter that will alter the nature and character of the said piece of land. In other words the alleged construction must stop forthwith. However the plaintiff must file an undertaking in damages in favour of the defendants in the event that the case is decided against them. That undertaking must be filed within 7 days of this ruling. Each party shall bear their own costs.

Orders accordingly.

***Dated, signed and delivered at Nairobi this 9<sup>th</sup> day of February, 2011.***

**A. MBOGHOLI MSAGHA  
JUDGE**