



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ELC NO. 645 OF 2010

KENNETH KIMARI GITEREPLAINTIFF/APPLICANT

V E R S U S

PROF. KIMANI WAITHAKA (Chairman).....1ST DEFENDANT/RESPONDENT
C. M. MWANGI (Secretary)2ND DEFENDANT/RESPONDENT
MARTIN MAKUNDI (Treasurer)3RD DEFENDANT/RESPONDENT
(All being sued as officials and on their own behalf and on behalf of Kabete Golf Club)

R U L I N G

It has not been denied that the Plaintiff bought land parcel L.R. No. 21697 (original No. 7660/21/2) Loresho Nairobi following a public auction conducted on 15th May 2009. The land was being sold on instructions of Bank of Baroda (K) Limited who were exercising their statutory right of sale. The land was then owned by Edom Investments Limited who had used its title to secure a loan on behalf of Intime Travel and Tours Limited from the bank. The Plaintiff paid KShs. 12,020,000/= for the property and subsequently paid KShs. 32,000,000/= in rates and rent to the City Council of Nairobi and the Land Registry. He obtained registration on 28th December 2009. When in early October 2010 he took building materials to the site, he says, the Defendants and their members, servants and/or agents descended upon him and his group and assaulted them and caused damage to his property. On 20th December 2010 this suit was filed for a permanent injunction, among other prayers.

Along with the suit was filed an application under Order 39 rules 1, 2, 3 and 9 of the Civil Procedure Rules for a temporary injunction to restrain the Defendants by themselves, their agents and/or servants from trespassing, encroaching, cultivating, growing, subdividing, selling, leasing, evicting the Plaintiff, or in any other manner whatsoever interfering with the suit property pending the determination of this suit. This is the application subject of this Ruling.

The Defendants are described as Prof. Kimani Waithaka (Chairman), C. M. Mwangi (Secretary) and Martin Makundi (Treasurer) and are all being sued on their own behalf and as officials of Kabete Golf Club. The 1st Defendant swore a replying affidavit to say that the Club they are officials of is known as Veterinary Laboratory Sports Club whose Chairman is the Director of Veterinary Services of the Ministry of Livestock, and therefore that the Club belongs to the Government through the Ministry. In the supplementary affidavit sworn by the Plaintiff he reiterated that the Defendants were officials of Kabete Golf Club. There is correspondence (“KW1”) dated 20th May 2006 by the Director of Veterinary Services to say the land on which the “**Vet labs Sports Club**” is belongs to the Ministry of Livestock and Fisheries Development and that the title to it is in the name of the Director. It would appear that the suit has been filed against officials of an unknown entity, and also that the Defendant ought to have been the Government of Kenya.

The second issue raised by Prof. Kimani Waithaka was that the suit property was part of Government land for the use of Veterinary Laboratory Sports Club and that it had been illegally allocated and that the title has since been revoked by the Registrar of Titles vide Gazette Notice No. 16531 of 21st December 2010 (“KW2”). The Defendants are saying that the title that the Plaintiff is exhibiting to support his case and application stands revoked. This revocation is acknowledged in the supplementary affidavit.

The principles for the grant of temporary injunction have been settled since the decision in **Giella – Vs- Cassman Brown & Co. Ltd [1973] EA 358**. The applicant has to show that he has a *prima facie* case with a probability of success; that he stands to suffer irreparable loss and damage if the application is not granted; and that, in case of doubt, the court should decide the application on the balance of convenience.

On the material made available at this stage of the case, I find the Plaintiff has not demonstrated a *prima facie* case with a probability of success. This is because the suit may be incompetent and the title which is basis of his claim has been revoked. This is not the forum to question the legality of the revocation. I find that this is enough to dispose of the application.

Consequently, the application is dismissed with costs.

**DATED AND DELIVERED AT NAIROBI
THIS 29TH DAY OF MARCH 2011**

**A. O. MUCHELULE
J U D G E**