



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 213 OF 2010

BENARD S. K. KIMETO.....1ST

PLAINTIFF

HELLEN KEMEI.....2ND

PLAINTIFF

VERSUS

ALBERT KIPKOSGEI LESSONET.....1ST

DEFENDANT

JOHN NGUNJIRI T/A TANGO AUCTIONEERS & GENERAL MERCHANTS.....2ND

DEFENDANT

COMMISSIONER OF LANDS.....3RD

DEFENDANT

RULING

By an application dated 23rd August, 2010 and filed on 25th August, 2010, the Plaintiff sought the following orders -

- (1) *THAT service of this Application be dispensed with in the first instance and the matter be certified as urgent.*
- (2) *THAT this Honourable Court be pleased to grant a temporary injunction restraining the*

defendant's by themselves, agents, servants and or representatives from evicting, trespassing, demanding rent or in any way interfering with the plaintiffs quiet possession and occupation of NAKURU MUNICIPALITY BLOCK 12/98 pending the hearing and determination of the application herein.

(3) THAT Honourable Court be pleased to grant an interlocutory injunction restraining the defendant's by themselves, agents, servants and or representatives from evicting, trespassing, demanding rent or in any way interfering with the plaintiffs quiet possession and occupation of NAKURU MUNICIPALITY BLOCK 12/98 pending the hearing and determination this suit.

(4) THAT the costs of this application be provided for.

The application was based upon the grounds on face of it, and the Supporting Affidavit of the Applicant sworn on 24th August, 2010, and temporary orders were granted on 25th August 2010 and have been extended since then, and are subsisting as now.

There is a Replying Affidavit sworn by the 1st Respondent in opposition to the application. The 1st Plaintiff filed on 16th September 2010 a Supplementary Affidavit sworn on 15th September 2010, and in the end counsel for the respective parties filed written submissions.

The application and the affidavits in support and the replying affidavits demonstrate the love of land and property among the Kenyan elite, and peddlers of influence in the corridors of power. This is a case of double allocation of government property by the same authorized officer, to two government officers. One allottee promptly sells the property while the other awaits the other bureaucratic processes to be completed. The purchaser does not disclose his identity until after the expiration of some 14 or so years. He ambushes the Applicant in style, with a bill of Ksh 800,000/= in rent arrears, and auctioneers, the 2nd Defendant in tow.

Shocked, and perhaps weeping crocodile tears, the Plaintiff wakes up and rushes to court and obtains temporary orders to stop the 1st Defendant from rendering him and his family homeless through the heartless actions of the 2nd Defendant, the auctioneer. The issue is whether the court should maintain the interim orders pending the determination of the case. I think the temporary orders restraining the Defendants from evicting the Plaintiffs from their home should be maintained.

The Plaintiff's pleadings show a prima facie case with a probability of success. In the state of confusion as to whether the suit property belongs to the plaintiff, the 1st Defendant, or the 2nd Defendant, the Commissioner of Lands, it is best to maintain the status quo until true ownership is established. The convenience lies with the plaintiff/applicant who is in occupation of the property, and he would not know who would compensate him or them if he were denied orders restraining the Defendants from evicting them.

Until the questions of double allocation is determined, and until the 1st Defendant can explain what has prevented him from asserting his rights on the property over the last 14 or so years, the justice of the case demands that the plaintiffs' application dated 23rd August, 2010 be allowed in terms of prayer 3 thereof.

There shall therefore be orders in terms of said, and costs be in the cause.

Dated, delivered and signed at Nakuru this 18th day of March 2011

M. J. ANYARA EMUKULE

JUDGE