



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC CASE NO. 384 OF 2010

PETER NJONJO KIBERA.....1ST APPLICANT
AGNES WAIRIMU NJONJO.....2ND APPLICANT

VERSUS

JACKLINE MWAI.....DEFENDANT

RULING

At the centre of this dispute is a parcel of land known as plot No. 239 Umoja Innercore Section V Infill. The plaintiffs claim beneficial ownership of the said property which they say the defendant illegally and unlawfully invaded and trespassed upon in the month of August, 2010 without their consent and took possession thereof. The defendant is also said to have denied the plaintiffs access, the actions of which have caused loss and damage. The plaintiffs have on numerous occasions requested the defendant to vacate the suit premises but has refused, neglected and or failed to do so.

Accordingly, the plaintiffs' claim against the defendant is for an order of vacant possession of the suit property and damages for the loss sustained as a result of the defendant's illegal actions. There is also a prayer for permanent injunction to restrain the defendant whether by herself, her servants or agents from remaining on the said property and to compel her to remove the fence and or structures on the suit property and restore the same into the condition that it was prior to the trespass.

Alongside the plaint there was filed an application by way of Chamber Summons for Interim Injunction Orders in line with the prayers set out in the plaint. The said application was brought Under Sections 3 and 3A of the Civil Procedure Act and Order XXXIX Rules 2,3 and 9 of the Civil Procedure Rules based on the grounds set out on the face of the application and an affidavit sworn by Peter Njonjo Kibera the 1st plaintiff herein.

The application is opposed and there is a replying affidavit sworn by Jackline Mwai who is the defendant herein. Both Learned counsel have filed submissions herein to address the application and cited some authorities. These I have read.

Without going deeper into the pleadings and the affidavits on record, I observe that there are competing interests in respect of the suit property. Prima facie both the plaintiffs and the defendant have presented cases with probability of success and in my view this is not a case that may be decided at this stage based on affidavit evidence. Considering the subject matter which is land, I am of the view that the best order that commends itself is to preserve the subject matter to protect the interests of both parties. In that regard, most of the submissions advanced by both parties belong to the province of the main hearing after pleadings have been closed, documents exchanged and issues drawn for determination. It may lead to injustice to the parties if the court were to interrogate and make a decision on the material disclosed this far.

Accordingly I direct that both the plaintiffs and the defendant in equal measure, shall not interfere with the suit property in any manner whatsoever until this suit is heard and finalized. If the defendant has not filed her defence she should do so upon service of summons to enter appearance so that the procedural steps required under the Civil Procedure Rules may be set into motion. Each party has liberty to apply and the costs shall be in cause.

Orders accordingly

Dated, signed and delivered at Nairobi this 25th day of May, 2011.

A. MBOGHOLI MSAGHA

JUDGE