



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISUMU

CIVIL SUIT NO. 101 OF 2010

MILIMANI RESORT LIMITED.....1ST PLAINTIFF
WALTER EDWIN OMINDE.....2ND PLAINTIFF

VERSUS

VINOD KUMAR RAMAOTTANAL PAL.....1ST DEFENDANT
ASHISH CHANDRAKAT RAYAT.....2ND DEFENDANT
MUNICIPAL COUNCIL OF KISUMU.....3RD DEFENDANT

RULING

The application before me is dated 30th June 2010 seeking for temporary orders of injunction by the plaintiffs against the defendants from dealing, developing or in any way disturbing land parcel number **KISUMU MUNICIPLAITY BLOCK 10 / 18**. The application is based on the grounds on the face of the application and the affidavit of **Walter Edwin Ominde** sworn on 30th June 2010. The said affidavit depones that the applicants are the registered owners of land parcel number **KISUMU MUNICIPLAITY BLOCK 10 / 19** and **20** respectively. The 1st and 2nd defendants are the registered proprietors of land parcel number **KISMU / MUNICIPALITY BLOCK 10/18**. Apparently all the three (3) parcels are adjacent to each other. The applicants content that the said Block 10/18 although it's in the names of the 1st and 2nd defendants was supposed to be a public utility. It was meant to be used for disposal of effluent or a sceptic tank.

However the 1st and 2nd defendants according to the applicants have fraudulently had themselves registered as proprietors and that they are in the process of carrying out construction to the detriment of the applicants who run a hotel facility in their plots.

I have perused the replying affidavit of the 1st defendant sworn on 12th July 2010, I notice from the same that they purchased lawfully the said property from **Harvinder Singh Rehal** and **Rajinder Singh Rehal**. They have exhibited all the conveyancing documents. I have no doubt from the documents filed herein that the parcel is in the name of the 1st and 2nd defendants.

The plaintiffs are asking me to issue an injunction and their main contention is that they stand to loose the use of the sceptic tank in the event that the defendants are allowed to carry out any construction on the suit property. The defendant have however argued that the plaintiffs have no locus standi to bring this suit. Black Law Dictionary 8th Edition has defined locus standi to be "**The right to bring an action or**

to be heard in a given forum”.

In my mind the fact that the plaintiffs own the adjacent property really gives them the right to bring this suit. The acts of the defendants whether positive or negative shall obviously affect or injure the plaintiffs. I have perused the maps attached to the said applications and I am persuaded of the close proximity between the parties herein.

The next issue for determination is whether or not the applicant are entitled to the orders sought herein. The celebrated case of **Giella =vs= Cassman Brown [1973] E. A. 358** has set out the parameters of granting an injunction which I don't need to reproduce here. Before arriving at my decision though it's worth mentioning the 3rd defendant's replying affidavit sworn by its clerk a **Mr. Daniel S. Nkere** dated 8th September 2011. The said affidavit confirmed that the property is indeed a public utility one meant for a septic tank. Though the 3rd defendant has distanced itself from questioning the title deed which is being held by the 1st and 2nd defendant, its letter dated 1st October 2009 attached to the said replying affidavit speaks volumes. The said letter has gone ahead to quote the letter dated 19th October 2005 from the Commissioner of Lands which originally owned the land (Lessor) which cast doubts on the validity of the said title. My ruling therefore is that the fact that on the face of it the government which is the lessor has questioned the validity of the title. The 3rd defendant has equally done the same. This consequently permits me to rely on the **Giella =vs Cassman Brown** principle of injunction and state that the plaintiffs' application ought to succeed. They have a prima facie case. I agree that pursuant to the provisions of the Registered Land Act Cap 300 Laws of Kenya, the same can still be challenged especially the process of acquisition which in this case the commissioner of lands has already raised some doubt. This is a matter though for trial.

Finally, the defendant has not demonstrated what and how they will suffer in the event of the injunction orders being granted. I however believe that they can be adequately compensated by way of damages.

The upshot of this therefore is that I shall grant the applicants' prayers in terms of prayer 3, 4, and 5 of the said application with costs. The Applicants shall nevertheless issue undertaking as regards damages within fourteen (14) days from the delivery of this Ruling.

Dated, signed and delivered at Kisumu this 10th day of November 2011.

H. K. CHEMITEI
JUDGE

HKC/aao