



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Civil Case 92 of 2008

WASO BUILDING AND ROAD WORKS CO. LTD.....PLAINTIFF

V E R S U S

FAYO GALGALO.....1ST DEFENDANT

ABDULLAHI DALACHA.....2ND DEFENDANT

ROBA ALI.....3RD DEFENDANT

ABDULLAHI ABDIRAHMAN.....4TH DEFENDANT

ABDIKADIR GALGALO.....5TH DEFENDANT

ABDI KUSO.....6TH DEFENDANT

MAALIM MALOW.....7TH DEFENDANT

ABDI HUSSEIN.....8TH DEFENDANT

● Injunction – conditions for grant of

R U L I N G

This Ruling relates to an application dated 15th July 2008 by the applicants against 8 Respondents for an order of injunction restraining the 8 defendants jointly and severally by themselves, their servants and/or agents from entering remaining or otherwise interfering with the Plaintiffs rights to a parcel of land referred to as Isiolo Departmental L.R. No. 117/91/16.

The Application first came exparte before my brother, Hon. Ouko and a temporary order of injunction was granted on 22.07.2008. That order was subsequently extend to 7.05.2009 when the matter was scheduled for hearing. The matter did not however take off on that date, and the application was scheduled for hearing on 15th July 2009 when the parties counsel appeared before me, and made their rival submissions.

I have perused the Applicants principal affidavit in support of the application sworn on 15.07.2008 by one Osman Maalim David who described himself as Managing Director of the Applicant Waso Building and Road Works Co Ltd formerly known also as Waso Construction Co Ltd. I have also perused the subsequent supplementary affidavit of the said Osman Maalim David sworn on 1st December 2008 in response to the various Replying Affidavits by the Respondents. I have further perused the Further Supplementary Affidavit of the said Osman Maalim Daud explaining that the company Waso Construction Co. Ltd to which the plot was allocated by the County Council of Isiolo had changed its name to Waso Building Road Works Company Limited. There is however neither a Certificate of Incorporation of Waso Construction Company Ltd nor is there attached a Certificated of Change of Name of the said company to Waso Building and Road Works Company Ltd. What is however attached is a Certificate of Incorporation of Waso Building and Road Works Company Ltd issued on 19.03.2007.

The Respondents have and the 2nd respondent Abdulahi Dalacha in particular has in para 21 of his Replying Affidavit sworn on 11.09.2008 questioned the capacity of the plaintiff (Waso Building and Road Works Company Ltd) to institute suit against him and the other Defendants when it was not the company to which the County Council of Isiolo made the allotment. This is however not the issue for decision at this stage. The issue at this stage is whether the Plaintiff/Applicant should be granted the equitable order of injunction.

The equitable order of injunction is at the discretion of the court. It is usually interlocutory in nature and is granted to maintain things in status quo. The court must however be satisfied that there is a serious question to be tried at the hearing and that on the facts the plaintiff is probably entitled to the relief. The case of **GIELLA VS CASSMAN BROWN & CO LTD (1973) E.A. 358**, at p. 360, the Eastern Africa Court of Appeal held inter alia that while it was at the highest importance that rules of natural justice were observed in any decision affecting the rights of the applicant (any party to an action), the court was only concerned at the interlocutory stage in applying the principles governing the temporary injunctions not with the merits or demerits of the case itself as commenced by the plaint in this court. The principles established in that case were-

:Firstly an applicant must show a prima facie case with a probability of success,

: Secondly an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable damage which would not be compensated by an award of costs.

:Thirdly if the court is in doubt, it will decide the application on the balance of convenience.

Applying the above tests to this case the facts availed appear to be that both the Plaintiff by whatever name it was known then, and at the time of filing suit, the mother of the application the subject of this Ruling was allocated a parcel of land referred to as Isiolo Departmental **LLR. No. 117/19/16**. This is borne out by Min. 21/9/application by Waso Construction Co. Ltd. Where it is said.

“An application by Waso construction Company Ltd for land for block making and associated works was laid before the committee.

The committee recommended that Waso Block makers be allocated 2 Ha of Land for block making and associated works.”

That minute, and others minutes of the Town Planning and Markets Committee meeting held on 26.03.1991 were confirmed at the subsequent meeting of 25.04.1991.

Similarly the 2nd Defendant Abdullahi. A. Dima Defendant and 3rd Defendant (Baba Abduba Ali among others were allocated unidentified Kambi ya Garba Business Plots under Number 44/85 at the

meeting of the Town Planning Markets and Housing Committee held on 3.12.1985. The 7th Respondent Maalim Mallow was according to his Replying Affidavit sworn on 11.09.2008 allocated Plot No. 102 Kambi/Garba. The 1st Defendant/Respondent (Fayo Galgalo) was allocated plot No. 34(ISL/117/99/34 and the 6th Defendant was allocated Plot No. 344. The 5th Defendant (Abdikadis Galgalo) was allocated a commercial Plot identified as No. The 3rd Defendant (Roba Ali Galgalo) received Plot No. 66 (1S2/117/98/66).

What emerges from the respective affidavits in reply is that the Defendants/Respondents received allocation of plots within Isiolo Township. It is also clear that these plots have identical numbers in the minutes. What is also clear is that these plots are not similar in size to the 2 Ha area plot allocated to the Plaintiff. The common theme is that these plots are all at Kambi Garba. Despite the indication in the Part Development Plans of individual blocks of Plots they are not numbered, and confusion among the allottees, and the Plaintiff and Defendants herein may well be understandable. There is therefore need for the parties (the plaintiff and the defendants to humbly approach the County Council of Isiolo, the District Physical Planning Officer and the District Surveyor to carry out a ground survey and point out to each, the Plaintiff and the Defendants the relevant grounds of their respective plots.

In the meantime and following the principles laid down in the **Giella vs Cassman Brown & Co Ltd**, the status quo in relation to the plaintiffs ground plot be maintained pending the hearing and final determination of this matter that is if the parties do not sooner determine the matter amicably.

There shall therefore be orders in terms of prayer 2 of the Plaintiff's Chamber Summons dated 15.07.2008. Costs be in the cause.

DATED, DELIVERED AND SIGNED THIS 14th DAY OF JANUARY 2010

M. J. ANYARA EMUKULE

JUDGE.