



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Suit 510 of 2004**

**GIKERA MUNENE. .... PLAINTIFF**

**VERSUS**

**MWANGI NGURO. .... 1<sup>ST</sup> DEFENDANT**

**THE CITY COUNCIL OF NAIROBI. .... 2<sup>ND</sup> DEFENDANT**

**THE DISTRICT LAND REGISTRAR. .... 3<sup>RD</sup> DEFENDANT**

**THE COMMISSIONER OF LANDS. .... 4<sup>TH</sup> DEFENDANT**

**R U L I N G**

The application before me is a Chamber Summons dated 5<sup>th</sup> February, 2009 argued before Honourable Justice Kubo (as he then was). The application seeks a temporary injunction restraining the 1<sup>st</sup> Defendant/Respondent, his agents, servants or employees from entering, developing, constructing, dealing in or in any way interfering with L.R. No. Dagoretti/Kangemi/T.46 pending the hearing and final determination of this suit.

The grounds upon which the application is based include the fact that the land was allocated to the applicant by the City Council of Nairobi in 1969 and it issued him with a certificate of title in 1998. That the development in terms of construction now being carried on the said land, is unlawful and injurious to the applicant. That the applicant himself has already developed the plot by putting up a residential-commercial buildings.

It is apparent from the record, however and the applicant/Plaintiff admits it, that the plot the Defendants intend to develop is not L.R. No. Dagoretti/Kangemi/T.436 but L.R. No. Dagoretti/S.396. The latter was apparently allocated to the Defendants who also obtained a certificate of title. It is situated directly in front of the former plot and is being used by the Plaintiff/Applicant as a car parking area. The allotment to the Defendant became on issue in Nairobi HCCC No. 645 pf 1997 in which the Commissioner of Lands was a party, but not the Plaintiffs, nor the City Council of Nairobi who were also the other parties' interested in the matter. In the said suit, the court ruled that the 1<sup>st</sup> Defendant herein who was the Plaintiff therein, was entitled to the ownership of L.R. No. Dagoretti/Kangemi/S.396.

In the replying affidavit in response to the Applicant/Plaintiff's case herein, the 1<sup>st</sup> Defendant, Mwangi Nguro, who is the owner of L.R. No. Dagoretti/Kangemi/S. 396, stated that the Plaintiff is not entitled to any temporary injunction.

He argues first that, he was the first to obtain his title to his plot before the Plaintiff/Applicant obtained his. That the latter's construction or development finished earlier because it was started and completed in a hurry to defeat the 1<sup>st</sup> Defendant's rights. Secondly, he argued that his registration of ownership of L. R. No. Dagoretti/Kangemi/S. 396 is indefeasible under the law. Thirdly, he said that the Plaintiff in the circumstances has no better rights to convert his plot to a parking area. Fourth, that unless the Commissioner of Lands under the right law, forfeits the allocation and pays compensation which he has so far not attempted to do , any earlier intention to do so is nothing but a mere intention which cannot and has no power to alter the proprietors land rights adversely.

The Respondent concluded that it will be unfair and unjust to grant an injunction against him in the above circumstances.

I have carefully considered the arguments advanced from both sides. It is not denied that the Defendant/Respondent has a good title to L.R. No. Dagoretti/Kangemi/S. 396. More so, after the same was tested in HCCC No. 645 of 1997 in this court and found to be intact. It is not also controverted that the Applicant/Plaintiff, obtained his title after the Respondent had obtained his. The applicant did not argue that his title to L.R. Dagoretti/Kangemi/T. 436, was issued with the right to spread over to Dagoretti/Kangemi/S. 396. The two titles are independent to each other, and neither is so far shown to be superior or subservient to the other.

In the face of the judgment existing in HCCC No. 645 of 1997, I find no grounds upon which I can grant a restraining injunction against a party who is fully entitled to own and enjoy the proprietary rights of Kangemi/S 396. There is no dispute over ownership over the said piece of land in so far as the title's proprietary rights are concerned. What appears to exist is the individual need by the Plaintiff to have the Defendant's plot for his personal benefit, and nothing more.

In the above circumstances the Plaintiff has failed to show that he has fulfilled the conditions laid down in the famous **Giella** case. He has failed to show for example that the Respondent has unlawfully encroached on to his piece of land and should be stopped. He has not proved that he really will unlawfully suffer loss or damage while the Respondent is developing his own land whose title was possibly issued earlier. Finally the balance of convenience do not in my opinion, favour an injunction in favour of the Plaintiff where the same will interfere with the enjoyment of the Respondent's proprietary rights.

This application shows no merit. It is hereby dismissed with costs to the Defendant. Orders accordingly.

Dated and delivered at Nairobi this 7<sup>th</sup> day of April , 2010.

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**D A ONYANCHA**

**JUDGE**