



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU**

Civil Case 237 of 2009

**NGUGI
KIMANI.....
...1ST PLAINTIFF**

**LOISE NJERI
NGUGI.....
.....2ND PLAINTIFF
HERMAN NGARI
KIRIKA.....3RD
PLAINTIFF
NELSON KIPTOO
KEMBOI.....
.....4TH
PLAINTIFF
DICKSON OWINO
OBONGO.....
.....5TH PLAINTIFF
ELIZABETH MUTHUMBI
GITAU.....
7TH PLAINTIFF
PETER MUIRURI
GATUNA.....
8TH PLAINTIFF
FRIDA WANGARI
MURAGURI.....9TH
PLAINTIFF
BONFACE CHEGE
NDEGWA.....
.....10TH PLAINTIFF**

**VERS
US**

**COMMISSIONER OF
LANDS.....
.....1ST DEFENDANT**

**MWANGI
GICHUKI.....
.....2ND DEFENDANT**

MARY N. KAMAU.....
.....3RD DEFENDANT

GEOFFREY K.
NG'ANG'A.....
.....4TH DEFENDANT

JOHN KURIA
GITAU.....
.....5TH DEFENDANT

RIFT ELECTRICAL
HARDWARD

& SHARES
LTD.....
.....6TH DEFENDANT

RULING

This ruling is in respect of two applications brought separately by the opposing sides but argued together. Both applications seek temporary injunctions. The first application is dated 19th August, 2009 and was brought by the plaintiffs, while the second one was brought by the defendants and is dated 25th September, 2009.

At the centre of the two applications are plots, known as NAKURU/MUNICIPALITY BLOCK 16/287-295 which are, no doubt, in the names of the 1st to 5th defendants. It is the plaintiffs' contention that the area occupied by plot Nos.16/287-295 was set apart as a parking area to the plaintiffs who had been allocated NAKURU/MUNICIPALITY BLOCK 8/14-44. That the sub-division of Block 16/287-295 and the eventual allocation to the defendants was illegal, null and void. That the documents of title in the possession of the defendants are a fraud.

The defendants on their part maintain that the plots were lawfully allocated to them; that the plaintiffs have prevented them from developing the same through hostility and violence.

While there is no doubt that the plaintiffs are owners of Block No.8/14-44, it is equally true that the defendants have been allocated Block No.16/287-295 in the same neighbourhood. In this application the plaintiffs must demonstrate that they have a *prima facie* case with a probability of success at the trial. Alternatively, they must show that they stand to suffer substantial loss if the orders sought are not granted. But should the court be in doubt, the matter must be decided on a balance of convenience. See **Giella Vs. Cassman Brown & Co. Ltd.** (1973) EA 358.

Although the three are to be considered sequentially, the courts have traditionally considered all the three conditions. I can only add that in deciding whether the applicant has a *prima facie* case, caution must be exercised to avoid making definite findings of fact or law which may have the effect of determining the issues in dispute with finality at interlocutory stage. Have the plaintiffs demonstrated that they have a *prima facie* case? They have sought, in the plaint, that the court declares them the-

“legal and/or registered owners of all that piece of land comprising title No.LR NakuruMunicipality Block 16/287-295”

They also seek a declaration that the 1st defendant in subdividing the above said property acted *ultra vires* as the property had been allocated to the plaintiffs and so they pray that the defendants' titles be cancelled and at the same time they be restrained by an order of perpetual injunction from entering or remaining on the property.

It is apparent that the plaintiffs' claim is based on the ownership of the suit property. They have deposed that when they were allocated their parcels No.16/14-44, the area occupied by the suit property was earmarked for their parking. They have, however, not led any form of evidence to buttress that claim. A letter exhibited by the plaintiffs to support their claim is dated 23rd August, 2001 addressed to the District Commissioner, Nakuru by the Municipal Council of Nakuru Town Clerk. That letter requests the District Commissioner to write to the Commissioner of Lands to investigate whether allocation of said parcel of land was done properly. The land in question is not specifically identified. It is simply described –

“Access road and tree planted strip area (Green Area) on Municipality Block 16/14-44”

To that extent the plaintiffs have not shown that they have a *prima facie* case.

The defendants on the other hand have shown that the suit property was allocated to them by the Commissioner of Lands and indeed by his letter dated 19th November, 2002 and a subsequent one dated 5th December, 2002. The suit property is confirmed to belong to the defendants. The defendants have not been accused of encroaching on the plaintiffs' Block 8/14-44. where the latter's proprietary interest is limited. I am persuaded that the defendants have a *prima facie* case that the suit land is theirs; that the plaintiffs have prevented them from developing their respective parcels.

In the result the plaintiffs' application dated 19th August, 2009 fails and is dismissed with costs. The defendants' application dated 25th September, 2009 is hereby allowed in terms of paragraph 2 of the application.

The plaintiffs to meet the 2nd, 3rd and 4th defendants' costs of this application.

Dated, Signed and Delivered at Nakuru this 7th day of May, 2010.

W. OUKO
JUDGE