



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

AT NAKURU

CIVIL SUIT NO. 356 OF 2009

MUNICIPAL COUNCIL OF

NAKURU.....1ST PLAINTIFF

**BOARD OF GOVERNORS OF MOI SECONDARY
SCHOOL.....2ND PLAINTIFF**

**THE SECRETARY AND CHAIRPERSON OF MOI PRIMARY
SCHOOL.....3RD PLAINTIFF**

**VERSUS
KENYA RAILWAYS**

CORPORATION.....DEFENDANT

RULING

The Municipal Council of Nakuru, Board of Governors of Moi Secondary School and the Secretary and Chairperson of Moi Primary School, the plaintiff/applicants herein, filed the Chamber Summons dated 18th December 2009, seeking an order of temporary injunction to restrain Kenya Railways Corporation, the defendant herein, from interfering with the plaintiff’s quiet possession of Nakuru Municipality Block 12/46, 12/47, 12/48 and 12/49 pending the hearing and determination of the suit.

The Chamber Summons is supported by the affidavit of Linet K. Abdalla, the Deputy Town Clerk of the 1st plaintiff, and submissions filed by Odhiambo Advocate. The Town Clerk deponed that the 2nd and 3rd plaintiffs are the legal owners of the land in dispute which was allocated to them and approved by the 1st plaintiff that it had become necessary to expand the 2nd and 3rd plaintiffs and the Director of Education reserved the said parcels of land by his letter dated 3rd January 1985 (SA2). That when it was necessary to construct the 2nd plaintiff, more land was excised from the defendant’s land as evidenced by the letter dated 3rd January 1984 (SA3). The proposal to excise the land was approved by the 1st plaintiff and the District Lands Officer Nakuru as evidenced by a letter (SA4A and B). The decision had been made by the President and due process was followed in terms of annexure exhibit (SA5a, b, c and d); that the commissioner of lands approved the plan but the defendant refused to surrender the titles. The approval is SA6A and B. it is the plaintiff’s case that the parcels of land which were allocated to the 3rd plaintiff, originally 541/1113, 1114. 1115 and 1116 have been advertised for sale and that is what prompted the filing of this application. The plaintiff exhibited a copy of the Newspaper advertisement dated 17th July

2009 (SA7). The plaintiff's counsel Mr. Koech, urged that since the Kenya Railways is a public body, the government can allocate its land for another purpose pursuant to Section 11(2)(h) of the Kenya Railways Corporation Act; that the applicants have therefore demonstrated that they have a prima facie case in that if their land is sold, the students who attend these schools are likely to suffer irreparably.

In opposing the application, Victor Wahome a Land Surveyor with the Kenya Railway Corporation deposed that all the parcels of land 451/113, 114, 115 and 116 belong to the defendant. That the land was L.R. NO. 451/167/XXXV Nakuru and was Grant No. I.R. 11657 which was purchased by the East African Railways and Harbours Administration from Benbros Motors (K) Ltd on 3rd June 1968. The sale agreement was exhibited as Exh.1. The said land was vested in the East African Railways Corporation by the East African Railways Corporation Act on 5th September 1969. It is the respondent's contention that the disputed land still belongs to it and the applicants have acknowledged it in their pleadings and that as late as October 2009, the respondent paid land rates of the said parcel of land (See Exh.3). According to the respondent, any purported allocation is illegal, null and void as no authority can allocate alienated land.

It does not seem to be in dispute that the disputed land is still registered in the name of the respondent. The respondent has shown that it purchased this land from Benbros Motors Ltd, a private entity. It is not clear why the applicants have never had the land transferred into their names since 1985 when the land was purportedly allocated to them. It has been alleged that the respondent refused to surrender the title deed. If indeed due process was followed in allocating the land to the 2nd and 3rd applicants, then even without surrendering the title, the same could have been cancelled after due notice was given, and a new one issued to the applicants by the Registrar of Lands. The letter dated 3rd January 1984 does not disclose the authority that instructed the Commissioner of Lands to allocate the land to the applicants. The 1st applicant and District Lands Officer, Nakuru, could not purport to allocate the land or approve the allocation of the land to the applicants. In my view, the issues that seem to arise are; whether the land was allocated to the 2nd and 3rd applicants; who was the allocating authority; whether the President had the power to allocate the respondent's land; so far the applicants have not demonstrated that they are the absolute owners of the disputed land as alleged. However, it seems the said land was earmarked for expansion of the 2nd and 3rd applicants and if sold as intended by the defendant, then it could be out of reach of the 2nd and 3rd applicants in the event their claim succeeds. On a balance of convenience therefore, I will order that the defendant be restrained from disposing of the suit land pending hearing and determination of this matter. In the same breadth, the issue of ownership being unresolved, it is ordered that the applicants should not deal with the disputed land in any manner, adverse to the interests of the defendant until the determination of this matter. Costs to be in the cause.

DATED and DELIVERED this 1st day of November 2010.

R. P. V. WENDOH

JUDGE

PRESENT:

Mr. Mongeri holding brief for Mr. Mutonyi for the respondent

Mr. Ateya holding brief for Mr. Kipkoech for applicants

Kennedy – Court Clerk