



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

LAND AND ENVIRONMENTAL LAW DIVISION

CIVIL SUIT (ELC) NO.378 OF 2010

**SOROYA INVESTMENTS LTD.....PLAINTIFF/
APPLICANT**

VERSUS

**CITY COUNCIL OF
NAIROBI.....DEFENDANT**

RULING

1. By a chamber summons dated 3rd August, 2010, the plaintiff/applicant sought several orders. Prayers No.(i) and (ii) are now spent. This ruling is for determination of the following prayers:

- That this honourable court be pleased to grant an interim injunction restraining the respondent either by itself, its agents, representatives, employees or any other trespasser or persons claiming under him or under similar claim, from entering upon, trespassing, alienating, encumbering, developing, and/or in any other manner dealing within or in all those property known as L.R No.209/12317 pending the hearing and determination of this suit.
- That this honourable court be pleased to grant an order compelling the demolition of all structures erected by the respondent either by itself, its agents and/or servants on the property known as L.R No.209/12317.
- That the costs and incidentals to this application be provided for.

2. The application is anchored on the following grounds: The applicant is the registered proprietor of the parcel of land known as L.R No.209/12317 (hereinafter referred to as the suit property). The respondent has trespassed upon the suit property and commenced construction of structures thereon. The actions by the respondent are illegal and improper. Therefore, the applicant has a prima facie case with high chances of success and should be allowed to ventilate the same. The applicant stands to suffer irreparable loss and damage, if the orders sought herein are not granted as it cannot be adequately compensated for its loss in

damages.

3. The application is supported by an affidavit sworn by the applicant's Managing Director, Mohamed Yunis Soroya on 3rd August, 2010. In his affidavit, Soroya reiterates that the applicant purchased the suit property. The respondent has now encroached on the suit property and commenced construction. The applicant admits that the respondent filed a suit against it for arrears of rates but maintains that the suit was substantially compromised by payment of Kshs.2 million.

4. The defendant objects to the application through grounds of opposition in which it is contended that the application and entire suit is frivolous, vexatious, bad in law and an abuse of the process of the court. A replying affidavit has also been sworn by Rose Mwema, the Deputy Director, City Planning. She depones that the suit is defective as there has been non joinder of material facts. It is contended that the applicant has failed to prove that the respondent is personally involved in the construction complained of. It is also maintained that the applicant has concealed material facts to the court.

5. I have carefully considered the application before me. The applicant has produced prima facie evidence showing that it is the registered owner of the suit premises. The applicant has also demonstrated that there is construction going on, on the suit property, which construction has not been sanctioned by the applicant, who is the registered proprietor. The applicant has further demonstrated that the defendant has authorized a third party to carry out construction on the suit property. In the circumstances, I am satisfied that the applicant has established a prima facie case. It is evident that unless the orders of interlocutory injunction are granted, the applicant will suffer irreparable loss as the suit property will be interfered with.

6. As regards the prayer for mandatory order of injunction for demolition of the structures, it would not be appropriate at this interlocutory stage to issue such an order particularly since there appears to be a third party whose role in this suit is still unclear. The applicant has complained that part of the construction was undertaken after the order of interim injunction which was issued by the court. That may well be so, the applicant is however at liberty to initiate contempt proceedings if the court orders have been deliberately contravened. For the above reasons, I grant the application dated 3rd August, 2010, only to the extent of issuing an order of interlocutory injunction prayed in prayer (iii) of the application. I further order that costs shall be in the cause.

Dated and delivered this 8th day of December, 2010

H. M. OKWENGU

JUDGE

In the presence of: -
Kayaiyi H/B for the plaintiff
Mboya for the Defendant
B. Kosei - Court clerk