



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

Civil Suit 90 of 2009

VIRGINIA KIENDANO NYOOTA.....PLAINTIFF/APPLICANT

VERSUS

JAMLECK MAINA KAMAU.....1ST DEFENDANT/RESPONDENT

CITY COUNCIL OF NAIROBI.....2ND DEFENDANT/RESPONDENT

R U L I N G

1. The application before me is the Chamber Summons dated 9/03/2009. The same is expressed to be brought under Order XXXIX Rules 1, 2, 3 and 9 of the Civil Procedure Rules, Sections 63(c) and 3A of the Civil Procedure Act, Cap 21 Laws of Kenya and all other enabling provisions of the Law. By the application, the Plaintiff/Applicant seeks a temporary Order of injunction restraining the Defendants/Respondent and/or their agents from interfering, trespassing, damaging and/or alienating LR No. Plot No.320 and 322, Umoja II Zone 8 pending the hearing of this suit. The Applicant obtained a temporary order of injunction on 10/03/2009.

2. As ordered by the court on 10/03/2009, the Respondents were duly served with the application on 16/03/2009 and with the hearing notice on 1/07/2009 for interpartes hearing on the 13/07/2009. At the hearing on 13/07/09, there was no appearance for the Respondents. After being satisfied that service was properly effected upon the Respondents, the court allowed the Applicant to proceed ex-parte.

3. The application is premised on the following grounds:-

1. *THAT the 1st Defendant in collusion with Officers from the 2nd Defendant's officers (sic) sent unknown persons to demolish the ongoing construction works on the Plaintiff's properties despite the Plaintiff having complied with all requirements that are appurtenances to the said developments. (sic)*

2. *THAT the 1st Defendant attempts to lay claim on the Plaintiff's parcels of land despite there being a clear demarcation on the Plans by the 2nd Defendant that the 1st Defendant owns parcel number L.R. No. 400 and 401/Umoja Zone 8.*

3. *THAT the 2nd Defendant's officer on 5.3.09 served upon the Plaintiff's agent/contractor undertaking construction on her plots notices to the effect that she was undertaking, illegal constructions whereas the Notices were duly indicated to be in respect of Plot No. 400 and 401 belonging to the 1st Defendant.*

4. *THAT the Plaintiff is apprehensive that if the Defendants' are not restrained from carrying out the intended demolitions as indicated in the Notice inadvertently served upon the Plaintiff they may*

proceed to demolish further the Plaintiff's property without due regard to the physical location of plot No. 400 and 401 that the Notices were intended for.

5. *THAT the Plaintiff stands to suffer substantial loss as she has expended quite colossal sums of money in construction of her properties the monies being her life saving and what she has worked for her entire life before her retirement.*

6. *THAT it is in the interest of justice that this application be allowed to avert further and future damage that the Plaintiff may suffer from the said intended demolitions.*

4. There is also a Supporting Affidavit sworn by the Applicant, Virginia Kiendano Nyotta. She avers that she purchased the two suit plots on or about 6/11/2007, each measuring 0.015 hectares from one John Mwangi as per the Sale Agreements annexed to her affidavit and marked VKN 1 (a) and (b). According to the said agreement, the Applicant paid Kshs.120,000/= for each of the plots. The Applicant also avers that upon purchase of the said plots, the Vendor, John M. Mwangi yielded to her the original copies of the Letters of Allotment in respect of both plots, Beacons Certificates and receipts as evidence of payment of Stand premiums pursuant to the Letters of Allotment. She has also annexed copies of these documents to her affidavit and marked them as "VKN2(a) and 2(b). From the allotment letters, Plot No. 320 was allotted to Mr. John M. Mwangi vide Allotment Letter dated 23/09/2002, while plot 322 was allotted to the same John M. Mwangi vide Allotment Letter dated 17/07/2003. The Beacon Certificates for the two plots were both issued on 11/11/2008. A receipt for part payment stand of premium in the sum of Kshs.10,000/= in respect of plot 320 is dated 27/05/2003 (in the name of John M. Mwangi) and another receipt for Kshs.30,000/= being Final Balance on Stand Premium is dated 05/09/2007.

5. The Applicant has also attached other receipts for payment of sums due in Stand Premium for plot No. 322. These are dated 8/07/2004 (Kshs.10,000/=) and 5/09/2007 (Kshs.30,000/=). On the same date, that is to say 5/09/2007, the Applicant says rate payments were made in respect of plot No. 320 for the years 2003 – 2007, all totaling Kshs.10,500/=. The Applicant also avers that she sought the assistance of the Director of Housing of the 2nd Defendant to assist her in transferring the plots into the names of Elizabeth Nyambura (320) and John M. Mwangi (322). The two letters were both written on 21/12/2007 and are annexed to the Applicant's affidavit and marked VKN 7(c) and VKN 7(b). The Applicant says that after she had made all the payments in respect of the two plots the 2nd Defendant issued letters dated 20/12/2007 confirming that the two plots had been fully paid for. The letters which were addressed to John M. Mwangi also advised him that he was required to pay Kshs.2000/= every year for rates and ground rent.

6. The Applicant also says that sometime in the year 2008, the 1st Defendant started laying claim to her property and that this intermeddling has continued despite the Applicant's attempt to have the dispute resolved at the Chief's Office of Umoja. She goes on to say that in the month of January 2009, she got the approval from the 2nd Defendant to start construction of residential houses on the plots. The Applicant has annexed evidence of this approval in the form of two payment receipts both dated 12/01/2009 for Kshs.30,000/= each. At paragraph 9 of her affidavit, the deponent says that some unknown people invaded the suit premises in the wee hours of the night between 26/02/2009 and 5/03/2009 and attempted to demolish the buildings. She also avers that on 5/03/2009 one Mr. Osike of the 2nd Defendant served her Contractor with a notice of illegal encroachment which was meant for plot No. 400 and 401 belonging to the 1st Defendant as per the annexure marked "VKN 10". This document, issued by the 2nd Defendant is titled "LAST AND FINAL REMINDER". Though the document is not dated, it is shown to have been served on 5/03/2009 and is addressed "TO THE DEVELOPER/OWNER PLOT NO. 400 and 401 UMOJA II ZONE 8". The subject of the document is "ILLEGAL DEVELOPMENT/ENCROACHMENT ON PLOT NO. 400 AND 401 UMOJA II ZONE 8". The notice required the addressee to show cause within 48 hours why demolition or prosecution should not be invoked regarding the alleged illegal development.

7. The Applicant says that these notices, which are for plots 400 and 401 having been served on her portend danger for her property and she says that unless the Defendants are restrained from demolishing

what she has built, she stands to suffer irreparable loss and damage. The Applicant in apprehensive that the 2nd Defendant's agents are working in cahoots with the 1st Defendant to deprive her of her plot numbers 320 and 321 on the pretext that they do not know the actual location of plot numbers 400 and 401.

8. Though served, the Respondents have not put in any answer to the allegations. In the absence of any answer to the application, learned counsel for the Applicant, Mr. Ochieng of M/s Nyandoro & Company, Advocates says that the Plaintiff/Applicant complied with all the requirements of the 2nd Defendant and that the said 2nd Defendant should not now turn around and purport not to know where the Plaintiff's plots stand or where plots 400 and 401 for which the demolish notice was intended stand.

8. The issue that now arises for determination is whether the Plaintiff/Applicant is entitled to the order sought. For the Applicant to succeed on her application, she must satisfy the following conditions:- (a) that she has established a prima facie case with a probability of success; (b) that she is likely to suffer irreparable loss and damage unless the order sought is granted and (c) if the court is in doubt, it will decide the case on a balance of convenience – see *Giella –vs- Cassman Brown & Co. Ltd.* [1973] EA 358.

10. After carefully considering all the pleadings, the affidavits and the annexures to the affidavits, I am persuaded that the Applicant has made out a prima facie case with a probability of success. The Applicant has placed evidence before the court that plots 320 and 322 Umoja II Zone 8 are her plots which she purchased from one John M. Mwangi under agreements of sale dated 6/11/2007. The Applicant has also demonstrated that all rates and rents up to year 2007 were duly paid. She has also shown that the plots were clearly marked on the ground and Beacon Certificates issued in respect of each plot. The Applicant has also shown that the 2nd Defendant gave its approval to her before she commenced construction. It is therefore strange that the 2nd Defendant should purport to issue the Applicants with demolition notices meant for plots 400 and 401.

11. In light of the above, I am also satisfied that the Applicant is likely to suffer irreparable loss and damage if the Respondents are not stopped from demolishing the Applicant's developments currently taking place on plots 320 and 322. I think that the Applicant would not only lose her cash investment todate, but she is also likely to lose the plots to marauders who purport not to know that plots 320 and 322 are not the same as plots 400 and 401. I also think that even if I were to decide this application on a balance of convenience, the same would tilt in favour of the Applicant. The Respondents have not shown whether the notices were erroneously served or not. In the circumstances, I think that the Applicant has enough reason to be apprehensive about what else the Respondents could do.

12. In the result, I do find and hold that the Applicant's application dated 9/03/2009 has merit. I grant the same and order that a temporary injunction shall issue forthwith restraining the Defendants/Respondents and/or their agents from interfering, trespassing, damaging and/or alienating LR No. Plots No. 320 and 322 Umoja II Zone 8 pending the hearing and determination of this suit. The Applicant shall also have the costs of this application.

It is so ordered.

Dated and delivered at Nairobi this 4th day of September 2009.

R.N. SITATI

JUDGE

Delivered in the presence of:

..... for the Plaintiff

..... for the Defendant

..... – court clerk