



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

Civil Suit 343 of 2009

JOEL NJAU KIHARAPLAINTIFF

VERSUS

GEORGE WAWERU.....1ST DEFENDANT

GEORGE KIYO.....2ND DEFENDANT

BERNICE NDIKU.....3RD DEFENDANT

MARY SITONIK.....4TH DEFENDANT

JACOB CHEPBOIT.....5TH DEFENDANT

RULING

Introduction

1. This suit concerns a dispute between the Plaintiff/Applicant Joel Njau and his 5 neighbours, the Defendants herein. All the Defendants are residents of Imara Daima Estate in Nairobi. The 5 Defendants occupy house numbers 896 through to 900 respectively in that order while the Plaintiff is the purchaser for value of two plots which overlook the Defendants' houses, namely LR Nos. 209/17044 and LR No.209/17043 respectively. The Plaintiff/Applicant says he bought the two plots from one Beatrice Nyambura Muiruri on 12/11/2007 and 4/12/2008 respectively. The Plaintiff's complaint is that the Defendants have extended the fence walls of their respective houses onto the Plaintiffs land and that despite notices to the Defendants to demolish the walls, the Defendants have refused, failed and/or neglected to do so, hence these proceedings. The Plaintiff prays for judgment against the Defendants jointly and severally for:-

(a) An order authorizing the Plaintiff to demolish the encroaching fence walls extended from the Defendant's house numbers 896, 897, 898, 899 and 900 and encroaching into the Plaintiffs' Plot L.R. No. 209/17043 and 209/17044 in Muima Properties Limited

(b) Mesne profits

(c) Cost of demolition

(d) Cost of the suit

The Application

2. The Plaintiff filed the chamber summons application dated 15/07/2009 simultaneously with the plaint. The application was filed under Certificate of Urgency and brought under Order XXXIX Rule 1 of the Civil Procedure Rules, Sections 63(e) and 3A of the Civil Procedure Act, Cap 21 Laws of Kenya and all enabling provisions of the law seeking **ORDERS THAT:-**

1. *This application be certified urgent and be heard forthwith.*

2. *The Plaintiff/Applicant by himself or through his agents and/or servants be authorized to demolish the fence walls encroaching into his plots LR Nos. 209/17043 and 209/17044 from the Defendants plots house Nos. 896, 897, 898, 899 and 900 Imara Daima Estate.*

3. *The OCS Embakasi be authorized to supervise and enforce the implementation of the orders.*

4. *Costs be provided for.*

3. The application is premised on the grounds that the Defendants have deliberately extended their respective fence walls onto the Plaintiff's two plots and that despite a request by the Plaintiff to the Defendants to demolish the walls, the Defendants have turned a deaf ear to the request. The Plaintiff says he is apprehensive that unless the orders sought are granted, the Plaintiff's land is on the verge of getting wasted or alienated by the Defendants.

4. The application is also supported by an affidavit dated 15/07/2009 and sworn by the Plaintiff/Applicant, Joel Njau Kihara. In the affidavit, the deponent reiterates the averments contained on the face of the application. He also says that from the survey map and plans for the initial land – annexures JNK 3 – the Defendants have encroached onto his land and he seeks permission of this court to bring down the Defendants' walls that have so encroached. He says that he is unable to utilize his property because the Defendants have unilaterally extended their walls beyond the boundary separating Imara Daima Estate and Muimana Properties Limited where the Plaintiff's property lies.

5. The application was served upon the Defendants on the 16th and 17th July 2009 respectively. An affidavit of service to that effect was filed in court on 22/07/2009. Being satisfied that the Defendants were duly served and had failed to turn up, the court allowed the Applicant to proceed with the application undefended.

The Findings and Conclusion

6. The court finds and holds that the Plaintiff/Applicant has demonstrated that unless the order sought herein is granted, he is likely to suffer irreparable loss and damage. The Plaintiff has demonstrated that the walls, built by each of the Defendants has extended beyond the boundary of the Imara Daima Estate within which the Defendants' houses are situated. Annexure JKN 4 confirms the fact that the Defendants walls are well beyond the boundary line. None of the Defendants has offered an answer to the Plaintiff's allegations of encroachment.

7. The principles governing the granting of injunctions were set out in the case of **Giella –vs- Cassman Brown & Company Ltd. [1973] EA 358**. In the instant case, the Plaintiff/Applicant has shown that he has a prima facie case with a high probability of success. He has also shown that he has suffered and continues to suffer irreparable loss unless the offending walls are brought down.

8. Accordingly, I allow the application dated 15/07/2009 in terms of prayers 2 and 3 thereof; that is to say that the Plaintiff/Applicant be and is hereby authorized either by himself or through his agents and/or servants to demolish the walls encroaching into his plots LR Nos. 209/17043 and 209/17044 from the Defendants plots house Nos. 896, 897, 898, 899 and 900 Imara Daima Estate. The OCS Embakasi Police Station shall supervise and assist the Plaintiff/Applicant in enforcing the order for demolition. Costs of this application shall be in the cause.

Orders accordingly.

Dated and delivered at Nairobi this 9th day of October, 2009.

R.N. SITATI

JUDGE

Delivered in the presence of:-

Mr. Gachie (present) For the Plaintiff

No appearance For the 1st to 5th Defendants

Weche - court clerk