



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

Civil Case 2346 of 2007

1. Land and Environment Law Division
2. Subject of main suit:- Tresspass by 5 defendants.

L.R. NO 209/12838

And IR 68162

Land survey plan No.201490

Pangani area

3. Application dated 14.12.2007

- (a) Injunction to restrain defendants by themselves their servants agent and or otherwise from interfering with the plaintiff quiet and peaceable enjoyment of its property.

4. No opposition to the application.

5. Held: That there be no interference of the suit land by the

Defendant/respondent and further no development of the property by the Plaintiff/applicant till determination of the main suit.

6. Case law

- (a) Giella V Cassman Brown & Co Ltd

(1973) E A 358

7. Advocate

- (a) H. Gachuna instructed by Susan Kahoya & Co Advocate for the plaintiff

- (b) Haron M. Ndubi and Co Advocate for 1st Defendant

- (c) Mwangi Kariuki King'ori 2nd Respondent in person-absent

- (d) Richmond Mwangi Githinji Alias Firimbi .. 3rd Respondent in person
- (e) Mathew Withaka 4th Respondent in Person
- (f) Njogu Njoroge alias Ndovu 5th defendant in person

GITERE KAHURA INVESTMENTS LIMITED PLAINTIFF

VERSUS

SHEIKH HASSAN & OTHERS.....DEFENDANTS

RULING

I: Application chamber summons 14 December 2007 Seeking Orders of Injunction

i) Background

1. Joseph Kimotho Njuguna and George Benson Waweru appear to have been granted title to a parcel of Land (as tenants in common) that is situated in the city of Nairobi measuring 0.2081 hectares, namely LR209/12838 which was so granted by the President of the Republic of Kenya on 1 September 1995.

2. This parcel of Land was then transferred to M/s Gitere Kahura investments Ltd for ksh 3.6million on 21 March 1996.

3. The Land seems to have laid idle. The original title also appears to have been lost and a provincial certificate of title was issued vide Gazette notice No 5850 of 29 June 2007. A provincial certificate so issued under section 71 of the Registration of Title Act was granted by the Registrar of Titles.

4. The plaintiff company proceeded to erect a perimeter wall around the parcel of land. On 6 December 2007, the plaintiff through its director Gitere Kahura alleged that the defendant their agents & or servant came onto the land on the said 6 December 2007 & began to demolish the perimeter wall. He reported the matter to the police on the same day.

5. On 14 December 2007, he filled this suit against the defendants seeking a permanent injunction against the defendants from interfering with the plaintiff quite possession of LR No.209/12838, general damages for trespass and damages to the suit property.

6. By the application of 14 December 2007, the plaintiff sought an injunction order to restrain the defendants who are interfering with the suit premises which is private land and not public land. That there is violence on the land and the situation is volatile. The plaintiff in his affidavit undertook to pay damages in the event the injunctive orders would have been obtained irregularly.

II: Respondents

7. The respondents before this court are five. The first defendant Sheikh Hassan is represented by M/s Haron M. Ndubmi & Co. Advocate. The 2nd respondent Mwangi Kariuki King'ori a candidate then running for councilor in the Kariokor Pangani Ward under the PNU ticket, the 3rd respondent Richmond Mwangi Githinji Alias Firimbi, the 4th respondent Mathew Wathika and the 5th respondent Njogu Njoroge alias Ndovu were all served with the application for injunction on 15 December 2007.

8. The matter was certified as urgent by the duty judge

(Visram J) (14.12.07) and the case fixed for inter parties hearing on 20.12.07. On that day of 20.12.07 the parties agreed to give the respondent time to put in their reply to the application. That an inter-parties hearing of 12 February 2008 was accordingly agreed by the parties.

9. On the said day of 12 February 2008, the respondents had filed no reply to the application either by themselves or through an advocate.

10. The hearing of the application proceeded under Order Lr 16 Civil Procedure Rules.

III Application

11. In the arguments put forward by court, the applicant seeks orders to restrain the defendants from interfering with the plaintiff suit premises. That the plaintiff are the rightful registered owner having a certificate of title to the land. The advocate for the applicant relied on the case of Giella V Cassman Brown & Co Advocate (1973) EA 358, stating that following the principles of the said case, the plaintiff has demonstrated there is a *prima facie* case with a probability of success; that the plaintiff would suffer irreparable injury and that the case be decided on the balance of convenience.

IV: Finding

12. The land in question is alleged to belong to the plaintiff. For

years it has laid idle with no development made. When indeed the plaintiff attempted to put a perimeter wall, he met resistance from members of the public (as stated in the affidavit of service).

13. The plaintiff now wants this court to restrain the defendants/respondent from interfering with their quiet possession of the land by way of an injunction.

14. The court herein notes that these are the same prayers sought in

the main suit. It also notes that this may be a public interest suit and would in effect agree to orders to the effect that the defendants herein do not interfere with the property in dispute. Further the court also orders that the applicant does not develop the said property and or build a perimeter wall. This court expected there to be a permit from the City Council of Nairobi granting permission to construct the said wall. I see none having been displayed nor an environmental impact assessment report, before any development could be done.

15. I hereby allow the application on terms of the consent of 20.12.07, that the defendant / respondent do not interfere with the development of the property in dispute nor should the plaintiff develop the piece of property pending the hearing of the main suit.

16. I further order that the plaintiff give an undertaking in damages in the event that these orders are not obtained correctly.

17. On 20.12.07 the applicant was required to serve the respondent with the plaint, summons to enter appearance and the actual chamber summons on the defendant, within 15 days. This has not been done. I hereby direct and order that this be duly done within 15 days of today's date in order to allow the defendants to enter appearance.

18. I order that the costs of the application be in the cause.

Dated this 13 day of February 2008 at Nairobi.

M. ANG'AWA

JUDGE

- (a) H. Gachuna instructed by Susan Kahoya & Co Advocate for the Plaintiff.
- (b) Haron M. Ndubi V Co Advocate for 1st Defendant
- (c) Mwangi Kariuki King'ori 2nd Respondent in person absent
- (d) Richmond Mwangi Gitjinji Alias Firimbi 3rd Respondent in person
- (e) Mathew Withaka 4th Respondent in Person
- (f) Njogu Njoroge alias Ndovu 5th defendant in person