



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CIVIL SUIT 145 OF 2006

GEORGE P. MAICHIBUPLAINTIFF

VERSUS

MANESH KANTILAL SANGRAJKA1ST DEFENDANT

ASHEET MAHESH SANGRAJRA2ND DEFENDANT

R U L I N G

The subject matter of this decision is the chamber summons dated 3rd July 2006 in which George P. Maichibu, the plaintiff herein, seeks to have Mahesh Kantilal Sangrajka, the 1st and 2nd defendant's herein, restrained from digging trenches, constructing a perimeter wall pending the hearing and determination of this suit. The summons is supported by the affidavit sworn by the plaintiff.

The defendants on the other hand have strenuously opposed the summons by relying on the replying affidavit of Mahesh Kantilal Sangrajka.

The substantive suit is expressed in a plaint dated 3rd July 2006. In that plaint, the plaintiff has sought three main prayers:

- (a) *A declaration that the subject piece of land upon which the defendants are constructing on is a road reserve.*
- (b) *A declaration that the title held by the defendants is illegal, null and void.*
- (c) *An order of permanent injunction.*

It is the submission of Mr. Ndegwa, learned advocate for the plaintiff that the land in which the defendants have started digging trenches with the aim of putting up a perimeter wall is a road reserve

which was acquired compulsorily and carved out of his lands L.R. No. MN/V/343 and L.R. No. MN/V/21. The title deeds to the above parcels of land was annexed to the supporting affidavit. The plaintiffs also annexed to the aforesaid affidavit a copy of the gazette notice No. 321 of 1977 in which the Government used to compulsory acquire the land in dispute. The plaintiff has further averred that if the defendants are allowed to continue with the constructions he will suffer irreparable loss in that the access to his plots will be blocked from the main Mombasa-Nairobi Highway.

The defendants are of the view that the application should be dismissed because they are doing their own developments on a piece of land in which they have legal title deeds hence they are not constructing on a road reserve. The defendants annexed a copy of the title to Plot No. 1720/v/MN to the replying affidavit. The defendants further stated that there was sufficient access to the plaintiff's plots.

I have carefully considered the submissions of Mr. Ndegwa, learned advocate for the plaintiff and that of miss Jadeed, learned advocate for the defendants. The principles for granting injunctions are well settled. On the first principle, it must be shown that the plaintiff has a prima facie case with a probability of success. In this respect the plaintiff is of the view that he will successfully challenge the defendants' title deeds on the ground that there was no land which was available for allocation or alienation because the same had been compulsorily acquired for the purpose of being used as a road reserve. This fact appears not to be seriously contested hence I am convinced that the plaintiff has shown that he has a prima facie case with a probability of success.

The second principle is that one must show that he is likely to suffer irreparable loss. The plaintiff in this case has categorically stated that his access to the main Mombasa-Nairobi Highway will be blocked. It is also averred that the plaintiff's access to sewerage facilities is likely to be hampered by the defendant's developments. The defendants do not deny that the plot they are developing is next to the plaintiff's plots. They do not also deny that the same is next to the Mombasa-Nairobi Highway. They state that they have not blocked the access to the plaintiff's land. I have carefully considered these competing averments and I am convinced that the plaintiff is likely to suffer irreparable loss unless the defendants' activities are stopped pending the hearing and determination of the main suit. Since I am satisfied in the first two principles I do not need to consider the third principle because in any case I am not in doubt.

The end result is that I grant a temporary order of injunction as prayed in the summons dated 3rd July 2006 pending the hearing and determination of this suit. Costs of the application is given to the plaintiff. This is one of those public interest cases which should be expeditiously heard to avoid the parties losing so much in damages as a result of stalled developments.

Dated and delivered at Mombasa this 18th day of May 2007.

J.K. SERGON

J U D G E

In open court in the absence of the parties.