



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL CASE 966 OF 2006

NELSON MUTURI KANGATTA1ST PLAINTIFF
CHRISTINE GESARE MIYOGO2ND PLAINTIFF
MBUGUA KANGETHE3RD PLAINTIFF
EUCABETH NYAMORA4TH PLAINTIFF

V E R S U S

GEDION KYALO1ST DEFENDANT
ONGORE A. AREAK2ND DEFENDANT
CITY COUNCIL OF NAIROBI3RD DEFENDANT

R U L I N G

This is an application by the Plaintiffs (chamber summons dated 14th September 2006) for a temporary injunction to restrain the Defendants

“from continuing to build or erecting structures or in any other way from interfering with a reserved area for the public at UMOJA INNERCORE, SECTOR 3 to allow residents or neighbours an access or through-way or passage to their residences in Plots Nos. B54.3, B54.4, B47.3 and B54.2”

pending the final determination of this suit. The application is brought upon the grounds that the structures erected by the Defendants are illegal and ought to be demolished; that the Defendants have illegally acquired a portion of the area reserved for the public, thereby denying the public access through the area; that the Plaintiffs’ efforts to have the Defendants or the relevant Government authorities demolish the structures have been in vain; and that the 3rd Defendant, which is the planning authority, has provided protection and/or encouraged the 1st and 2nd Defendants in the illegal acquisition of a portion of the area reserved for the public.

There are two affidavits sworn in support of the application. The first one is by the 2nd Plaintiff while the second one is by the 1st

Plaintiff. There is also a supplementary affidavit sworn by the Plaintiffs' advocate, SENETI O. ALBERT, filed on 2nd October 2006.

The Defendants have opposed the application. The 1st Defendant has filed grounds of opposition dated 9th November, 2006 and a replying affidavit sworn by himself on 21st November, 2006 and filed the same day. The 2nd Defendant has filed a replying affidavit sworn by himself and filed on 28th September, 2006. The 3rd Defendant has filed grounds of opposition dated 17th October, 2006. The Defendants basically oppose the application upon the following grounds:-

1. That the application has been brought too late as the structures complained of have already been constructed or substantially constructed, and have been so constructed for over three years before the Plaintiffs came to court.
2. That the Plaintiffs have no *locus standi* to bring the suit or the application.
3. That the Plaintiffs have not in any event satisfied the conditions for the granting of temporary injunction.

I have duly considered the submissions of the learned counsels appearing. I have also read all the affidavits filed in support of or in opposition to the application. To begin with, only the 2nd Plaintiff has placed before the court evidence of ownership or proprietary interest over one of the properties adjoining the area of public land allegedly illegally acquired, or to use popular parlance, "grabbed", by the 1st and 2nd Defendants. All the other Plaintiffs have not placed before the court any such evidence of their proprietary interest in any of Plots Nos. B54.3, B54.4, B47.3 and B54.2. The applications of the 1st, 3rd and 4th Plaintiffs, therefore, cannot be sustained.

Regarding the application by the 2nd Plaintiff, it is apparent from the application itself, the supporting affidavits and the replying affidavits that the structures complained of were either substantially built or already standing when the Plaintiffs came to court. It appears that the dispute between the Plaintiffs and the Defendants had been going on since the year 2003 and that in the meantime the 1st and 2nd Defendants were building in the disputed portions of land. The Plaintiffs did not come to court until September 2006. By the present application they are seeking equitable relief. Equity does not aid the indolent. It is not explained in the supporting affidavit why the Plaintiffs waited for three years before coming to court. To grant the temporary injunction now sought would have the result of putting the 1st and 2nd Defendants to great hardship on account of the fact that they have over the last three years committed resources towards developing the disputed portions of land. As already noted, some of those developments are complete while others are substantial. The balance of convenience, therefore, militates against granting the order sought. The 2nd Plaintiff's application must also fail.

In the result, the chamber summons dated 14th September, 2006 is hereby dismissed with costs to the Defendants. Order accordingly.

DATED AT NAIROBI THIS 21ST DAY OF JUNE 2007

H. P. G WAWERU

J U D G E

DELIVERED THIS 22ND DAY OF JUNE 2007