



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 6792006

1 Land and Environmental Law Division

2 Subject of main suit: Land ownership

LR NO.11509

LR NO.11510

LR NO.11511

Lower Kabete, Nairobi (Originally alleged and admitted to belong to Kenya Institute of Administration (KIA)).

- i) Land legally surrendered by government and allocated to plaintiff on 19 June 1981.
- ii) Registrar of Titles Act Cap.281
- iii) Plaintiff did not develop land till 2005/2006, when attempts to do so resisted by defendant

3. Application 27 June 2006 for injunction

i) There be an injunction restraining the defendants from Stopping the plaintiffs to fence off LR 11509 Lower Kabete Nairobi.

4. Replying defendant

- i) The Government action in alienating said land was null and void
- ii) Reconstruction of burned down property complete

5. Held

- i) Application for injunction – dismissed
- ii) No prima facie made out

6. Case law

7. Advocates:

W.C. Githara for W. Githara & Co. Advocates for the plaintiff

L.G. Kimani for L. Kimani & Co. Advocates for the defendant

B. Kamotho for K.K. Karanja & Co. Advocates for the 3rd party

JULIE NYAWIRA HAMTEHNGE.....PLAINTIFF

VERSUS

KENYA INSTITUTE OF ADMINISTRATION.....DEFENDANT

RULING

I: INJUNCTION

1. Julie Nyawira Mathenge, the plaintiff herein is the registered proprietor of land parcel LR No.11509, LRNO.11510, and LR No.11511 lower Kabete Nairobi. She has filed suit against the Kenya Institute of Administration (the defendant herein) seeking for an injunction:-

“Barring the defendant by itself or its servants or agents from trespassing or constructing upon leasing out, elevating or otherwise interfering with the plaintiffs properties namely

LR11509

LR11510

LR11511

Lower Kabete Nairobi till the determination of the suit. That the defendants by itself or its servant and or agents be “barred” by an injunction from stopping or otherwise interfering with the plaintiffs dancing of LR11509 lower Kabete”.

II Background of the application dated 27th June 2006

2. The Kenya Institute of Administration used to be a department within the Kenya Government that undertook training of civil servants. On the 1 July 1997 the Kenya Institute of Administration Act 1996 (No.2 of 1996) came into operation. This meant the organization became a parastatal body corporate, to sue and be sued.

3. It is alleged that all along the Kenya Institute of Administration had land alienated to them. The plaintiff claims that three parcels of land being LR11509, 11510 and 11511 situated at the lower Kabete were allocated to her. To begin with she was allocated LR11509 on 9 June 1981. The said land had (as per Para 5 of plaintiff) “originally belonged to the defendant (as then constituted) but had been surrendered to be developed as a commercial” site where it was “allocated to the plaintiffs.” In 1997 she asked for additional land which was granted to her.

4. Between 1981 and 2005 she did no development. When she was ready, she requested the Ministry of Works to demolish the structures as shops on the land. The said structures were being used by the defendants. There was a fire that damaged the property. The plaintiff attempted to fence off the

property. The defendant repaired the property so damaged and resisted any fencing to take place.

5. The plaintiff filed suit to court on the 27 June 2006 together with an application dated 27 June 2006 for an injunction. This was duly granted on 27 June 06 (Visram J). No inter parties hearing was heard until almost a year later.

II Should an injunction issue?

6. The defendants filed no defence as summons to enter appearance had not been served but objected to the said application for an injunction by way of a replying affidavit.

7. The defendants alleged that the said property so obtained by the plaintiff was irregularly so obtained, without following the laid down procedure. The property in question, was taken off the original main land, was to be used as a shopping centre to serve the defendants community. Temporary shops that burnt down were in effect serving the community. The property was reconstructed and repaired.

8. The defendant's main argument was that the land in question originally belonged to the defendants. It had been set aside by the government of Kenya for their use. Once land is so set aside, the government cannot again go to alienate the said property to a third party. Where this is done it is null and void.

9. They relied on the statement that of the Ndungu report.

“Neither the President nor the Commissioner of Land or any other person or authority has powers to allocate public lands which have been set aside for a public purpose.”

10. In the case law of Jandu v Kirpal & Another (1975) EA 223 where it has been established there is fraud, the title may be set aside. They allege the plaintiffs obtained title fraudulently.

11. Is there a probability of success to this application and would the plaintiff suffer any loss if an injunction is not granted.?

12. I find that the plaintiff has for the last 26 years had kept quiet and took no steps to develop the land allegedly allocated to her. If she had, then she would have been visible to the defendants who would have taken action. Correspondence though appearance to have been exchanged to various government departments on this point but appears to be part of evidence to be adduced in the trial.

13. I further find that this is not a case for an injunction to be granted. No prima facie evidence has been established that the plaintiff would suffer any loss.

14. I decline to grant the injunction and dismiss the application with costs to the defendants.

15. I make further orders that the summons to enter appearance be served upon the defendant if the same has not expired or yet been issued.

Dated this 18th day of June 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

W.C. Githara for W. Githara & Co. Advocates for the plaintiff

L.G. Kimani for L. Kimani & Co. Advocates for the defendant

B. Kamotho for K.K. Karanja & Co. Advocates for the 3rd party