

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 1133 of 2005

STEPHEN KAMUNGE WAINAINA.....1ST PLAINTIFF

JOSEPH NJOROGE KIMANI.....2ND PLAINTIFF

PAULINE MWEMBA KIROMBO.....3RD PLAINTIFF

VERSUS

CITY COUNCIL OF NAIROBI.....DEFENDANT

RULING

The plaintiffs brought this suit against the defendant by way of a plaint dated 16th September 2005 seeking orders that a permanent injunction do issue restraining the defendant, its officers, servants, agents or any person claiming any interest through it, from entering, damaging the suit land LR NO. 209/14882 and the structures thereon or in any other manner interfering with the suit land. They also claim costs of the suit. In paragraph 3 of the plaint the plaintiffs aver that they are the registered proprietors as lessees from the Government of Kenya of all that parcel of land known as LR NO.209/144882 Embakasi Nairobi.

Simultaneously with the plaint the plaintiffs filed a Chamber Summons under Certificate of Urgency seeking injunctive orders similar to those contained in the plaint.

The application is supported by an affidavit sworn by STEPHEN KAMUNGE WAINAINA in which he avers in paragraph 2 that by a grant of title dated 12th February 2003 they were registered proprietors of LR NO. 209/14882 Embakasi Nairobi, that the plaintiffs are the registered proprietors as lessees from the Government of Kenya of all that parcels of land known as LR NO. 209/144882 Embakasi Nairobi (annexed copy of grant marked SKWI, SKWI refers to LR NO.209/14882) that the defendants officers trespassed on the suit land on 8th September 2005 and 13th September 2005.

The application is opposed by the respondent who has filed a replying affidavit sworn by Mr. G.C.K. Katsoleh in which he avers that the applicants are not the registered proprietors of LR NO. 209/144882 Embakasi; that land parcel NO LR 209/144882 has been confirmed by the Commissioner of Lands in her letter dated 1st September 2005 that it does not belong to the Applicants and in any case, they have thus no locus standi or any rights and that the application dated 16th September 2005 ought to be struck out, that the parcel of land has never been allocated to the Applicants since the commissioner has stated categorically that no claim is available on the part of the Applicants.

Mr. Kithi counsel for the respondents submitted that orders being sought cannot be granted for the reasons that the applicants are not the registered owners of the suit land, that the applicants have not established a prime facie case with probability of success, that the Applicants have not shown how they will suffer irreparable loss which they cannot be compensated by way of damages and that the balance of convenience tilts in favour of Defendant/Respondent.

It seems from pleadings that there is a confusion as regards the Reference Number of the suit land right from the beginning. In paragraph 3 of the plaint, the plaintiffs aver that they are the registered proprietors

as lessees from the Government of Kenya of all that parcel of land known as LR NO. 209/144882 while (b) of the prayers sought refers to the suit land as LR NO. 209/14882. Paragraph 2 of the Chamber Summons by the plaintiff dated 16th September 2005 refers to the suit land as LR NO. 209/14882 while paragraph 4 of the supporting affidavit sworn by the first plaintiff refers to the suit land as LR NO. 209/144882 in paragraph 3 of the replying affidavit by G.C.K. Katsolel dated 8th November 2005 he avers that the plaintiffs are not the registered owners of land parcel LR NO. 209/144882.

And in paragraph 4 he avers that the Commissioner of Lands has confirmed in her letter dated 1st September 2005 that the suit land LR NO. 209/144882 does not belong to the applicant. But the said letter from the Commissioner of Lands which was annexed as GCKKI refers to the suit land as LR NO. 209/14882.

From the above it is not clear whether the suit land referred to in these pleadings is LR NO. 209/144882 or LR NO. 209/14882. And since plaintiffs have not made an application to amend the a normally in the pleadings the court is unable to make out as to whether the injunctive orders sought should be directed to land parcel known as LR NO.209/144882 or land parcel known as LR NO. 209/14882, and for the reason the applicants application is dismissed with orders that costs be in the cause.

Dated and delivered at Nairobi this 20th day of March 2006.

J.L.A. OSIEMO

JUDGE