



**Nganga & 2 others (Suing in their capacity as Chairman, Secretary and Treasurer of New Kamiti Kahawa West Self Help Group) v Director of Surveys & 2 others (Environment & Land Case E150 of 2022) [2022] KEELC 15645 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15645 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E150 OF 2022  
LN MBUGUA, J  
DECEMBER 20, 2022**

**BETWEEN**

**DAVID CHEGE NGANGA ..... 1<sup>ST</sup> PLAINTIFF  
JAMES MWANGI THUO ..... 2<sup>ND</sup> PLAINTIFF  
DAVID MAINA MUKUHA ..... 3<sup>RD</sup> PLAINTIFF  
SUING IN THEIR CAPACITY AS CHAIRMAN, SECRETARY AND  
TREASURER OF NEW KAMITI KAHAWA WEST SELF HELP GROUP**

**AND**

**DIRECTOR OF SURVEYS ..... 1<sup>ST</sup> DEFENDANT  
DIRECTOR LAND ADMINISTRATION ..... 2<sup>ND</sup> DEFENDANT  
CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Before me is an application dated April 22, 2022 where the applicants/plaintiffs are seeking an order of interim injunction restraining the defendants/respondents, their employees, servants, agents and/or any other person claiming through them from entering into, trespassing into, carrying out the survey works, alienating or in any other manner dealing and interfering with the applicant's quiet and peaceful enjoyment of the land known as LR No 59/R (unsurveyed residential plot – Kamiti, Nairobi), the suit land, pending the hearing of the application and the suit and that costs be provided for.
2. The application is premised on the grounds set out on the face of the application and on the supporting affidavit of the 1<sup>st</sup> plaintiff. The applicants contend that they are the bonafide allottees of the suit land vide the allotment of July 10, 1997. However, the respondents have unlawfully conspired not to



process the lease in their favour and have embarked on survey works in favour of an undisclosed 3<sup>rd</sup> party. They therefore stand to suffer irreparable damage if the orders are not granted.

3. In response there of the respondents have filed grounds of opposition dated July 14, 2022 where they contend that the allocating body is the Nairobi City County who is a necessary party in these proceedings and that their role in the issuance of the leases has not crystallized.
4. I have considered all the issues raised herein including the submissions proffered.
5. Order 40 rule 1 and 2 of the Civil Procedure Rules, 2010 provides that a court may grant a temporary injunction or such order for the purpose of staying and preventing the wasting damaging or disposition of the property as the court thinks fit. The issue on grant of temporary injunctions was settled in the case of Giella v Cassman Brown [1973] EA and reiterated in several case laws including Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR; whereby courts held that the applicants must satisfy that they have a *prima facie* case with a probability of success. Secondly, an interlocutory injunction will not be granted unless it is demonstrated that the applicant might suffer irreparable injury which would not be adequately compensated by an award of damages. Lastly, if the court is in doubt on the above two requirements, it will decide the application based on the balance of convenience.
6. The applicants have availed the letter of allotment dated July 10, 1997. Thus they have proved that they have a legitimate claim over the suit property. The respondents have not out rightly denied that there are survey works being undertaken. They simply state that the case is premature as the stage of issuance of leases has not crystallized.
7. I am inclined to find that the applicants deserve protection at this stage, since they have held unto the allotment letter for a lengthy period. However the allotting authority was the Nairobi City Council hence there is a need to join this party in these proceedings as proposed by the respondents.
8. I proceed to grant orders as follows:
  - i. An order of injunction is hereby issued against the respondents in terms of prayer No 3 in the application dated April 22, 2022, but such orders shall remain in force for a period of one year only.
  - ii. An order is hereby issued to join the Nairobi City County as a 4<sup>th</sup> defendant in this suit.
  - iii. The applicants are directed to amend their pleadings accordingly and serve all the suit papers plus summons to enter appearance upon all the parties within 30 days.
  - iv. Costs in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF DECEMBER, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N MBUGUA**

**JUDGE**

**In the presence of:-**

**Kabue for Plaintiff/Applicant**

**Court assistant: Eddel**

