



Limon Investments Company v Racecourse Primary School & 6 others (Environment and Land Case Civil Suit E239 of 2020) [2022] KEELC 15499 (KLR) (15 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15499 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E239 OF 2020
JE OMANGE, J
DECEMBER 15, 2022**

BETWEEN

LIMON INVESTMENTS COMPANY PLAINTIFF

AND

RACECOURSE PRIMARY SCHOOL 1ST DEFENDANT

**NATIONAL GOVERNMENT CONSTITUENCY DEVELOPMENT FUND
BOARD STAREHE NGCDF- EMPLOYER 2ND DEFENDANT**

GRAVILE ENTERPRISES 3RD DEFENDANT

THE VALLEY SCHOOL 4TH DEFENDANT

DIRECTOR OF SURVEY 5TH DEFENDANT

CHIEF LAND REGISTRAR 6TH DEFENDANT

NAIROBI CITY COUNTY GOVERNMENT 7TH DEFENDANT

RULING

1. The applicant filed a notice of motion application under certificate of urgency dated July 12, 2022 seeking for the following orders:-
 - a) That the application be certified urgent and be heard *ex parte* in the first instance.
 - b) That pending the hearing and determination of the present suit the honorable court be pleased to issue a 3rd defendants/ respondent injunction order restraining the 1st defendants whether by themselves or through their agents, employees or anybody claiming through them or under their name from trespassing into, alienating ,selling, transferring, trading and or interfering in



any manner with the plaintiffs plot No LR 209/6860 situate within Nairobi County pending the hearing and determination of this suit.

- c) That 1st defendant/ respondent be ordered to remove the part boundary wall constructed on the front side and lower behind Starehe Boys Centre as built on the wrong boundary to be the middle where it was before.
 - d) That the 4th defendant/ respondent be ordered to remove the structures build on the lower side behind the Starehe.
 - e) That the 5th defendant/ respondent be ordered to cancel the folio No 454 /25 survey map for land reference no 209/16441 together with its deed plan No 264585 IR 100691 Nairobi within Race Course Mueni Road.
 - f) That the 5th defendant/ respondent be ordered to have the registration No 272/ 182 A for land Ref 209/6860 Nairobi IR No 88654/1 Ref No 886541/1 Ref DLSG 102/212/2106/CWK/ MKB received on July 20, 2016 No 571 from Nairobi City County.
 - g) That the 6th Respondent be ordered to have the cancellation of the Title Land Ref 209/16441 IR No. 100691 in the name of Dakane Abdullahi Ali and also that in the name of the Limon Investment Company Limited displayed by the Registrar one day at Counter Ardhi house.
 - h) That the 6th defendant/ respondent be ordered to issue land official search.
 - i) That the 4th defendant/ respondent be ordered to remove the race course.
 - j) That in charge OCS Pangani Police Station be ordered to supervise implementation of the orders.
 - k) That costs be in the suit.
2. The application is premised on the grounds that the applicant has a registered lease in respect of the suit property. It is the contention of the director of the applicant company that various entities have interfered with its possession of the property. The applicant thus requests the court to grant the orders sought.
 3. The applicant's averments were uncontroverted in their entirety as the Respondent did not file any documents.
 4. The principles for grant of an injunction were well laid out in the celebrated case of *Giella v Cassman Brown*. These are the issues for consideration before me:-Does the applicant have a *prima facie* case? Would the applicant suffer irreparable harm that cannot be compensated by way of damages?Lastly where does the balance of convenience lie?
 5. The applicant has produced a lease document which is not challenged.
 6. In the event the *status quo* is not maintained, damages might not offer adequate compensation. The balance of convenience tilts in favour of issuing orders to protect the *status quo* as opposed to allowing a situation where there is no clarity.
 7. However, I have noted that the applicant seeks far reaching orders in the application. I am also cognizant of the fact that I have not had a chance to hear the defendants. In a matter such as this it



is interest of justice and the just determination of proceedings that the court hear evidence of both parties before making any drastic orders.

8. In the circumstances the court makes the following orders;
 - a. A temporary order to issue restraining the 3rd respondent from trespassing into, alienating, selling, transferring, trading and or interfering in any manner with the plaintiffs plot No LR 209/6860 situate within Nairobi County pending the hearing and determination of this suit.
 - b. The other prayers to be determined during the hearing of the main suit.
 - c. The plaintiff/applicant is to have costs of the application.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 15TH DAY OF DECEMBER 2022.

JUDY OMANGE

JUDGE

In the presence of: -

Mr Kamau for the applicant.

No appearance for the respondent.

Steve - Court Assistant.

