

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Civil Case 71 of 2005

MOHAMED SHAIYA PLAINTIFF

VERSUS

NANYUKI MUNICIPAL COUNCIL DEFENDANT

RULING

Mohamed Shaiya, the Plaintiff/Applicant has come to this court under order XXXIX Rules 1, 2, 3, 4, 5 & 8 of the Civil Procedure Rules seeking an order of temporary injunction restraining the Nanyuki Municipal Council (hereinafter referred to as the Defendant) its agents, servants and or workers restraining them from interfering in any way whatsoever with the applicants parcels of land known as L.R. No. Nanyuki Municipality Block 7/257, 258 and 259 (formerly plot Nos. 14, 40 and 41) pending hearing and final determination of this suit.

The applicant who is the registered owner of LR Nos. Nanyuki Municipality Block 7/257, 258 and 259 (hereinafter referred to as the suit properties) contends that he has been in occupation of the suit properties since the year 1992 and has been paying rates ever since. The applicant further contends that he prepared and submitted building plans which were duly approved by the Defendant and the physical planning Department in 1993. That upon survey and issuance of the lease certificates he fenced off the suit properties but that in August year 2005 the Defendant through its agents, workers or servants had unlawfully invaded the suit properties and destroyed the barbed wire and off cut wood fencing the land. The applicant has suffered damage as a result of this action and is apprehensive that the Defendant intends to deprive him of the suit properties hence his prayer to this court for an interlocutory injunction pending the hearing of his suit which he has filed contemporaneously with this application.

The respondent has filed grounds of opposition and a replying affidavit sworn by its municipal Engineer Robert Ngige Gikonyo. The Respondent disputed the ownership of the properties. They further urged the court not to grant the injunction as it was seeking to stop what had already occurred. It was further submitted that the applicant has not shown that the approval granted by the Respondent for development was in respect of the suit properties, and that even assuming that the approval was for the suit properties, same was granted in 1993 had by virtue of By-Law No. 9 (1) lapsed and could not be used for development in the year 2005.

The Respondent maintained that the fence was an unauthorized structure and that the applicant was duly served with a notice pursuant to By Law No. 30. Mr. Kariuki who appeared for the Respondent urged the court to find that the conditions for granting an injunction as laid down in the case of **Giella v/s Cassman Brown Co. Ltd.** had not been established by the applicant and therefore reject the application. Having considered this application I find that the applicant has produced certificate of lease in respect of the following properties Nanyuki/Municipality Block 7/257, Nanyuki Municipality Block 7/258, and Nanyuki Municipality Block 7/259. This is sufficient prima facie evidence that all these properties which are registered in his name belong to him.

The applicant has also produced development plans in respect of plot LR 278/14, 2787/40 and 2787/41 Block 7/729 Nanyuki Municipality. He has also produced land Rate demand notes and receipts in respect of Uns plot 14/7, plot 40/7 Uns plot 41/7. The issue which arises is whether the plots referred to in the

lease document is one and the same as the plots referred to in the Development plans and the Rate demand notes and receipts. Although the applicant has given the impression that the plots are the same he has not annexed anything in support of this contention. Moreover one wonders why the Rate demand notes and receipts would refer to the former number and refer to the plot as unsurveyed when the plot has already been registered and a certificate of lease issued.

The Respondent has maintained that the plots are in fact distinct and that the applicant has never obtained any approval for development in respect of the property for which he holds the lease. I am inclined to agree with the Respondent as the applicant has not shown that he has any approved development plans in respect of the leased premises.

The applicant has not convinced this court that there is a prima facie case that the Respondent is in any way interfering with his occupation or use of the properties subject of the lease which he holds. There is further no substance in the allegation that the Respondent intends to grab the applicant's leased properties. I find that the applicant has not met the conditions laid down in the case of Giella v/s Cassman Brown Ltd. to justify the granting of an interlocutory injunction. His application is accordingly dismissed with costs.

Dated signed and delivered this 17th day of November 2005.

H. M. OKWENGU

JUDGE