



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CIVIL CASE NO.174 OF 2003

DR. PROTUS KEBATI MOMANYI PLAINTIFF

VERSUS

NYANSIONGO TOWN COUNCIL)

THE CHAIRMAN NYANSIONGO TOWN COUNCIL) DEFENDANTS

TOWN CLERK NYANSIONGO TOWN COUNCIL)

RULING:

Applicant's application is for a temporary injunction restraining the respondents; their agents, servants, workers or assignees from entering, occupying or doing anything on the applicants' land parcel No.NYANSIONGO TOWNSHIP/141. He also prays for costs.

Applicant submitted that the plot in dispute was allocated to him by the Commissioner of Lands for a period of 99 years for use as a light industry. He annexed a copy of official certificate of search which confirms that he obtained the plot legally after all procedures had been followed. He paid all the rates required. When he applied to the Commissioner for approval of development on the plot the respondents notified the Commissioner that they had no objections. However respondents recently invaded the plot and purported to repossess the same claiming it was grabbed.

In opposing the application the respondents submitted that although the applicant has title to the land the method of obtaining the same was irregular and unlawful. The council never advertised for the plot for members of public to apply. The council then makes recommendations to the Commissioner of Lands as to who is to be allocated.

Further court was told that Minister of Local Government has written a circular to councils to reposses all grabbed plots.

There is no disputed that the applicant has a lease issued by the Commissioner of Lands. The respondent admits that. Respondent also does not deny invading the plot but justifies that the land was irregularly allocated to the applicant and as per directive of their Minister they are repossessing it.

Applicant has all the documents and has been paying rates even to the respondent. Respondent even wrote a letter of no objection to developments to the Commissioner of Lands. If the plot was irregularly allocated can only be proved during the hearing. It is not enough to say so in an affidavit. As of now the applicant has exhibited all the essential documents to the ownership of the plot. The Commissioner of Lands has not cancelled the lease he issued to the applicant. Applicant has therefore proved that he has a strong case. Respondent cannot purport to act on a directive from their Minister as there is a law

governing ownership of property. There must be a process to repossess illegally allocated land. It should be followed.

I therefore feel that respondent has shown to this court that he is entitled to the prayers sought. The application is allowed and court orders as follows: Respondents, their servants, agents or assignee are hereby restrained from entering, occupying or interfering in any way with the applicant's plot No.NYANSIONGO SETTLEMENT/141 until suit is finalized.

In the light of the issue raised of regulating of allocation the applicant, though at liberty to use the plot should not make any permanent developments on the plot until the suit is determined.

Costs of this application to the applicants.

KABURU BAUNI

JUDGE

24/2/2004

Signed, dated and delivered on 24/2/04. Mr. Abuki for applicant, Mr. Oguttu for Rogito for Respondents.

KABURU BAUNI

JUDGE