REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO 436 OF 2018

MOHAMED MUZNA SALEH.....1ST PLAINTIFF

STEPHEN GITARI GITHINJI.....2ND PLAINTIFF

VICTORY HOMES LIMITED.....3RD PLAINTIFF

=VERSUS=

THE KENYA AIRPORTS AUTHORITY.....1ST DEFENDANT

NATIONAL BUILDINGS INSPECTORATE.....2ND DEFENDANT

REGISTRAR OF TITLES, NAIROBI.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

RULING

1. Before court for determination is the plaintiffs' Amended Notice of Motion dated 19/10/2018 in which the plaintiffs seek interlocutory injunctive orders in the following terms:

> ***c. That pending the hearing and determination of the suit, this honourable court be pleased to issue a temporary injunction restraining the respondents either by themselves, their agents, servants, assignees or any other person from entering, encroaching, trespassing, working, developing, constructing, demolishing, removing, or disposing the suit properties known as LR No. 209/12447, LR No. 209/12449, LR No. 209/12450, LR No. 209/12451, LR No. 209/12455 and / or fixtures and fittings thereon so as to preserve the substratum of the suit.***
>
> ***d. That this honourable court be pleased to order that a status quo prevail and be maintained to the extent that the applicants remain in possession of the suit properties.***

2. The case of the plaintiffs is that they are the registered proprietors of Land Reference Numbers 209/12450, 209/12451 [registered in the name of the 1st plaintiff]; 209/12455 [registered in the name of the 2nd plaintiff]; and 209/13447 and 209/12449 [registered in the name of the 3rd plaintiff]. On 28/9/2018, they were issued with demolition notices giving them 14 days to vacate the suit properties, failure to which their developments were to be demolished. They contend that they developed the suit properties with the consent, approval and knowledge of all government agencies and departments. They add that their titles had never been challenged nor revoked. Consequently, they sought the following orders in the main suit.

3. The case of the defendants is contained in their statement of defence dated 15/1/2019 and in the replying affidavit sworn on 20/3/2019 by Mr Moses Nyakiongora. In summary, their case is that the titles held by the plaintiffs were obtained unlawfully, illegally, fraudulently and without their authority hence they are a nullity *ab initio*. They add that the titles held be the plaintiff relate to and constitute an encroachment on the 1st defendant's land contained in Grant No IR 21919 and delineated on Survey Plan Number F/R 265/27. They add that the structures on the said land pose a security risk to the Country's airspace as they encroach on the flight path and were erected without approval from the Kenya Civil Aviation Authority. They urge the court not to grant the injunctive reliefs sought.

4. The application was canvassed through written submissions which I have duly considered.

5. The suit herein is one in a series of many suits that relate to parcels of land which the defendants contend were illegally surveyed and titled out of a larger parcel which prior to that had been surveyed and titled in the name of the 1st defendant. The 1st defendant has denied

consenting to or approving the resurvey of its land. They contend that their original survey plans and title are still intact.

6. A lot has happened since the series of suits were lodged. The Executive Arm of Government, together with relevant organs of the State have put in place an alternative dispute resolution mechanism involving grant of leases by the 1st defendant on a case by case basis. This is aimed at mitigating against loss of valuable investments as a result of what is alleged to be past illegalities.

7. In light of the above developments, I will not pronounce myself on the merits of the present application. I will instead direct parties to this suit to pursue the said alternative dispute resolution mechanism. This decision is informed by the need to avoid making court pronouncements that might jeopardize the possibility of an amicable resolution of the present dispute.

8. I will in the intervening period preserve the developments on the suit properties without granting an injunctive order in the terms set out in the Amended Notice of Motion dated 19/10/2018. There will be no order as to costs at this pont.

Directions and Orders

9. In light of the foregoing, the court issues the following directions and orders:

> ***a) Parties to this suit are granted six months within which to pursue and conclude alternative dispute resolution negotiations as recommended by the National Land Commission***
>
> ***b) Between now and the next court activity date, the developments on Land Reference Numbers 209/12447; 209/12449; 209/12450; 209/12451 and 209/12455 shall be preserved in that they shall not be demolished by the defendants herein.***
>
> ***c) Mention on13/10/2021 for further directions of the court.***
>
> d) ***Parties are at liberty to move the court for a pronouncement on the merits of the Amended Notice of Motion dated 19/10/2018 should the negotiations fail.***

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18TH DAY OF FEBRUARY 2020.

B M EBOSO

JUDGE

In the Presence of: -

Mr Okwach for the Plaintiffs

Mr Motari for the Defendant

Court Clerk: June Nafula