

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
H.C.CIVIL CASE NO.192 OF 2002

SHAH ORIOERTY LTD & OTHERS PLAINTIFFS
VERSUS
PARSHOTTAM JAMNADAS GOHIL }
& OTHERS } DEFENDANTS

R U L I N G

By an application of the 1/2/2002 the Plaintiff seeks to restrain the Defendant from demolishing the Plaintiff development on the 1870/11/91 or trespassing thereon.

A dispute has arisen between the Plaintiff and Defendant as the Defendants wish to use a road which the Plaintiff claims is on their property and is subsequently private.

The Plaintiff sub-divided the said property into eight separate plots and as one of the conditions of the sub-division, the area which is the road reserve was to be surrendered to the Government.

The Defendants who were the owners of L.R.No.1870/11/187 also sub-divided that piece of land and one of the conditions of sub-division was that they were required to create a parking area and drive way within their property. However they wish to use the road reserve, created as a condition of the sub-division of the Plaintiff's plot.

From the correspondence it appears that both the Government and Nairobi City Council have swayed from side to side over the question of what road of access the Defendants should use.

In a replying affidavit of the 26th February, 2002 Dilipkumar A. Shah depones in para.2 that the parking area and drive way has not been surrendered to Government.

The Defendant have not been able to show that this is not the case.

Until such time as the road way taken from the original piece of land owned by the Plaintiff is surrendered to Government it continues to be private land owned by the Plaintiff or as I suspect by the first Plaintiff.

I would add that both parties have produced correspondences, which shows that there is an ongoing dispute with regard to who should use the drive way on the Plaintiff's land.

Be that as it may I find that as the position is at present the Plaintiffs have a prima facie with a probability of success and that they can stop the Defendants using the drive way on their land. Damages would not be an adequate remedy as the owner of land has an absolute right to refuse another the right to use their land without permission. I therefore grant the prayer sought for pending the hearing of this suit.

Dated and delivered at Nairobi this 13th day of June, 2002

P.J. RANSLEY

COMMISSIONER OF ASSIZE

