



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 1387 OF 2013

MICHAEL MAINA KIMANI.....1ST PLAINTIFF

FRIDAH NYAWIRA WAICHUNO.....2ND PLAINTIFF

-VERSUS -

NATIONAL SOCIAL SECURITY FUND.....1ST DEFENDANT

NELSON OBAMA.....2ND DEFENDANT

JUDGEMENT

Background

1. The plots which are the subject of this suit are at Tassia Estate. The Land where Tassia Estate is built used to belong to National Social Security Fund (NSSF). Over time, squatters grouped themselves into various self-help groups who then invaded NSSF's land which they sold to their members. In early 2000, NSSF filed a suit against the invaders. An order of eviction was issued. This forced the self-help groups to approach NSSF to sell the land to them.

2. The NSSF agreed to regularize the plots which had already been sold to various individuals. The affected individuals were asked to pay a certain agreed amount to NSSF. It became necessary for NSSF to re-plan the area to provide for infrastructure and other amenities. In the process of re-planning, a number of persons missed out plots. It became necessary for some plots to be created by reducing the size of roads. This is how the plot belonging to the 2nd Defendant was created.

3. The 1st Plaintiff had LR No. 97/1180/013 and the 2nd Plaintiff had LR No.97/0704/014. The two plots were adjacent to LR No. 97/704/2141 belonging to the 2nd Defendant. The 1st and 2nd Plaintiffs started developing their plots by putting up a storey building which had commercial spaces on the ground floor which faced the 2nd Defendant's plot. The 2nd Defendant came and dug a trench on his plot which effectively cut off the Plaintiffs building. The balcony of the first floor of the Plaintiffs' building hang over the 2nd Defendant's plot. The 2nd Defendant complained about the encroachment and this IS when the Plaintiffs moved and filed this suit in which they seek the following reliefs:-

A. An injunction restraining the Defendants and or their agents or employees from trespassing to or in any other manner interfering with the suit properties being plot Nos. LR No. 97/1180/ 013 and LR No.97/0704/014 Nairobi in Tassia II Estate.

B. An injunction restraining the Defendants and or their agents or employees from developing the frontage of the suit being plot Nos. Nos. LR No. 97/1180/013 and LR No.97/0704/014 Nairobi in Tassia II Estate.

C. Costs of the suit

D. Interest on the costs at court rates

E. Such other or further relief as this Honourable court may deem fit to grant.

First Plaintiffs case.

4. Though there are two plaintiffs in this case, it is only the 1st plaintiff who testified and only produced documents touching on his case. He

testified that he purchased two plots from one Bishop Lawi in 2005. He registered one plot in his name and the other in his wife's name. He bought each of the plots for Kshs.74,000/=. It later turned out that the plots belonged to NSSF. The NSSF asked them to make payments to it when the plots were being regularized.

5. It is the 1st Plaintiff's evidence that when he purchased the two plots, the two plots were fronting a road reserve. When he started constructing a building on the two plots, he built it from beacon to beacon. The balcon of the first floor of the building protruded on to the road reserve. The NSSF later created a plot from the road reserve in front of the two plots and sold it to the 2nd Defendant. The 2nd Defendant dug a trench on the acquired property which blocked the commercial shops which were on the ground floor. It is the action of the 2nd Defendant which made him and the 2nd Plaintiff to file this suit.

Analysis

6. The 1st Defendant filed a defence but did not call a witness during the hearing. The 2nd Defendant did not file any defence and as such did not call any witness during the hearing. The Plaintiffs did not file any submissions. It is only the Defendants who filed their submissions. Having gone through the evidence of the 1st Plaintiff and the submissions filed, there is only one issue for determination. This is whether the Plaintiffs have established a case for grant of injunction as sought.

7. While the 1st Plaintiff's was being cross- examined, he confirmed that as at the time he started putting up a building on the two plots, the area had been re-planned. He conceded that he did not get any building approvals from the then Nairobi City Council. He also conceded that the balcony of the building has protruded on to what he calls a road reserve. During cross-examination, the 1st Plaintiffs' was shown a survey plan of the area. According to this survey plan, the 2nd Defendant's plot is shown as being next to the two plots belonging to the plots held by the Plaintiffs. The Plaintiff's plots have a frontage to a road which is at the back of the two plots. It is clear from the said maps that each plot within the area has only one frontage to a road. There is no single plot which has access to two roads from two sides except for corner plots. The Plaintiffs' plots are not corner plots.

8. The Plaintiffs do not dispute the fact that there was re-planning of the area and that some plots were created by reducing the size of the roads. The Plaintiffs have conceded that they started their construction after the re-planning. The Plaintiffs had access to a road but they decided to build shops which faced the plot belonging to the 2nd Defendant. This being the case, the Plaintiffs are the authors of the unfortunate situation they find themselves in. The balcony of the 1st floor of their building is protruding on to the 2nd Defendant's plot.

9. The 2nd Defendant's plot was legally created. The confusion which the Plaintiffs find themselves in is as a result of their failure to seek approved building plans. The Plaintiffs were at liberty to build their shops to face the road where their properties front. They instead decided to have the shops face the 2nd Defendant's plot on the false assumption that their plots were facing a road reserve. It is therefore clear that the Plaintiffs cannot be granted an injunction to stop the 2nd Defendant from developing his plot.

Disposition.

10. The action of the 1st Defendant to create plots for those who missed out was the only option. According to the map, the 2nd Defendant's plot was created from an area which did not have any significant effect on reduction of the road. The NSSF did not interfere in any way with the plots of the plaintiffs as the 1st Plaintiff has stated that he started construction of the building after re-planning. There is therefore no basis for grant of any injunction against NSSF which has no interest in either the plots held by the Plaintiffs or that held by the 2nd Defendant. I find that the Plaintiffs have failed to prove their case on a balance of probabilities. The Plaintiffs suit is dismissed with costs to the Defendants. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 23RD DAY OF MARCH 2021

E.O.OBAGA

JUDGE

In the Virtual presence of:-

M/s Mbabu for 1st Defendant

Mr Osodo for 2nd Defendant

Court Assistant: Okumu

E.O.OBAGA

JUDGE