

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

ELC NO. 42 OF 2020

ALI ZUBERI MWANYUMBA.....PLAINTIFF

VERSUS

SECRETARY TO THE BOARD OF MANAGEMENT,

FRIEDA ELSE NEITSCH NURSERY SCHOOL.....1ST DEFENDANT

COUNTY GOVERNMENT OF KWALE.....2ND DEFENDANT

RULING

(Application for injunction; plaintiff claiming ownership of land where defendants have put up a nursery school; plaintiff demonstrating ownership of the land; no response by defendants; plaintiff has prima facie case but the school already running; in those circumstances, orders issued to stop further construction and the status quo to be maintained)

1. The plaintiff commenced this suit through a plaint filed on 18 March 2020. The plaintiff has pleaded that he is the registered owner of the land parcel Kwale/Ramisi Phase III Scheme/940. He avers that he had been in Tanzania, and when he came back to Kenya in April 2019, he found a school built on his property and operational with construction for expansion on going. It is his case that the construction on the suit land is illegal and needs to be stopped. In this case, he wants an order of permanent injunction to restrain the defendants from the suit land; an order of mandatory injunction to compel the defendants to demolish the structures on the suit land; mesne profits; general damages and costs. Contemporaneously with the plaint, the plaintiff filed an application seeking orders of injunction to restrain the defendants from trespassing or constructing on the land or in any other way interfere with his enjoyment of it pending hearing of the suit. It is that application which is the subject of this ruling.

2. Despite being served, the defendants have neither entered appearance nor filed any response to this application. The material before me is therefore only that supplied by the applicant.

3. The supporting affidavit is sworn by the applicant. He has annexed a copy of the title deed. He has deposed that the defendants are still constructing on the land and annexed some photographs. He has averred that the defendants have cut down his trees and he has annexed a crop damage assessment report.

4. I have taken into account all the above. It does actually appear, from the copy of title deed annexed, that the applicant is the registered owner of the suit land. No explanation has been forthcoming from the defendants as to why they have constructed on the suit land. The plaintiff has therefore demonstrated a prima facie case with a probability of success.

5. On whether the plaintiff stands to suffer substantial loss, I note from the photographs attached that there are already complete buildings, and it does seem that there is a school developed on the suit property, which has been operational from the year 2018. Considering that position, I do not see what additional loss the applicant stands to suffer. I am therefore only persuaded to issue orders stopping additional construction, which I hereby issue, but I am not persuaded to stop the operations of the school. That will need to await the final verdict of this court upon a full hearing. In other words, the current status quo be maintained until the case is finalized. Costs of this application will be costs in the cause.

6. Orders accordingly.

DATED AND DELIVERED THIS 10TH DAY OF MARCH 2021

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA