



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUNGOMA

ELC CASE NO. E002 OF 2021

NAZMUDIN ABDULALI SHARIFF.....1ST PLAINTIFF

ALTAf ABDULALI SHARIFF.....2ND PLAINTIFF

FIROZ ABDULALI SHARIFF.....3RD PLAINTIFF

VERSUS

KENYA RAILWAYS CORPORATION.....DEFENDANT

RULING

What is pending my determination in this matter are prayers No (d) and (e) of the plaintiffs Notice of Motion dated 4th February 2021. Those prayers seek the following order: -

(a)

(b)

(c)

(d) That pending the hearing and determination of the suit, the Honourable Court be pleased to restrain the defendant/Respondent, servants, agents or anybody else acting through them from demolishing a building, removing or evicting anybody from the plaintiffs' land parcel NO BUNGOMA/MUNICIPALITY/608.

(e) That the costs of the application be provided for.

The application is premised on the provisions of **Order 40 Rules 1, 2 and 3** of the **Civil Procedure Rule** and **Sections 3 and 37** of the **Civil Procedure Act**. It is predicated on the grounds set out therein and supported by the affidavit of **NAZMUDIN ABDULALI SHARIFF** the 1st plaintiff/Applicant herein.

The gravamen of the application is that the plaintiffs/Applicants are the proprietors of the land parcel **NO BUNGOMA/MUNICIPALITY/608** (the suit property) and hold a Certificate of Lease issued in 2007 for a period of 99 years from 1991. That they have extensively developed the suit property on which have erected a Bar and Restaurant, Supermarkets, Banking Hall and 60 business stalls. That the Defendant/Respondent has illegally and without any notice or Court order announced that it will demolish the premises erected thereon and that the tenants will be evicted. This has caused panic among the tenants some of whom have now moved out and closed their businesses thus necessitating this application. That unless the Defendant/Respondent is restrained, the plaintiff/Applicants will suffer irreparably.

When the application was placed before me on 5th February 2021, I certified it as urgent and granted prayer (b). I did not see the need to grant prayer (c) for reasons which are contained in my orders issued on 5th February 2021. I further directed that the application be served upon the Defendant/Respondent which would have 7 days within which to respond. The matter would then be mentioned on 22nd February 2021.

By 22nd February 2021, the Defendant/Respondent had not filed any reply to the applications and I allowed their Counsel **MR JUMA** another 7 days to do so. The matter was listed for mention on 3rd February 2021 to confirm if the Defendant/Respondent had filed their

response and submissions.

On 3rd March 2021, **MR WAMALWA** holding brief for **MR MUTEI** for the Defendant/Respondent informed the Court that **MR MUTEI** was indisposed and that was why the replying affidavit had not been filed. He further stated that the officer who should have signed the replying affidavit was out of the country and sought another extension of 14 days. **MR KITUYI** for the Plaintiff/Applicant, and who had already filed his submission as directed, strongly opposed any further extension arguing that the Defendant/Respondent was not serious and was taking this Court's orders for granted and urged the Court to allow the application as it is not opposed.

Clearly there can be no basis upon which this Court can grant the Defendant/Respondent more time to file their response to the application filed under Certificate of Urgency one month ago. Surely there must be other persons in the employment of the Defendant/Respondent who can sign the replying affidavit in opposition to the application. I agree that the Defendant/Respondent is not serious in this matter. I decline to allow any further direction.

The application therefore remains un-opposed. It is accordingly allowed in the following terms: -

(a) Pending the hearing and determination of this suit, the Defendant/Respondent is restrained by its servants, agents or any other person acting through it from demolishing any holding on the land parcel NO BUNGOMA/MUNICIPALITY/608 or evicting any tenants thereon.

(b) The plaintiff to ensure that this suit is ready for hearing and determined within 12 months of this ruling or this order of injunction shall lapse unless the Court directs otherwise.

(c) No orders as to costs.

Boaz N. Olao.

J U D G E

4th March 2021.

Ruling dated, delivered and signed at BUNGOMA this 4th day of March 2021. The same is delivered by way of electronic mail in keeping with the COVID – 19 pandemic guidelines.

Boaz N. Olao.

J U D G E

4th March 2021.