



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LANDS COURT AT NAROK

ELC CAUSE NO. 181 OF 2017

MAU RESORT LTD.....PLAINTIFF/APPLICANT

-VERSUS-

COUNTY GOVERNMENT OF NAROK.....DEFENDANT/RESPONDENT

RULING

By a Notice of Motion dated 19th April, 2020 the applicant sought for the following orders: -

(i)

(ii)

(iii) That a temporary injunction be issued restraining the Defendant/Respondent whether by itself, servants and agents or whomsoever is acting on its behalf from, setting up a market place, erecting any structures thereon, depositing any construction material, alienating, demolishing trespassing onto or in any way dealing with Plot No. 300/7 NAROK TOWNSHIP in any manner whatsoever pending the hearing and determination of this suit.

The Application was based on the grounds that the Applicant is the registered owner of plot No. 300/7 Narok Township and that it had been in occupation and possession of the same since 2010 and paying the respondents annual rates for the same. The Applicant further contended that it had acquired the Defendant's approved Development Plants for the property. It is the Applicant's contention that the Defendant's agents/or servants had on 17/4/2020 trespassed on the property vandalized and destroyed water tanks without any justification with the intention of converting the said parcel of land into an Open Air Market which action the Applicant contends would violate and contravene the Applicant's rights to enjoy quiet possession of the suit land.

The Applicant by reasons aforementioned states that it will suffer irreparable loss and damage. The Application was opposed by the Respondent by way of a Replying Affidavit sworn by Elizabeth Sanangoi Lolchoki who is the Respondent's County Secretary. It is the Respondent's contention that the Applicant has misrepresented and cancelled material facts in a bid to gain the court's sympathy and that a party guilty of such cancellation of material facts should not be granted the equitable remedy of injunction. The Respondent averred that the letter of allotment to the plot dated 22/7/2010 is not accompanied by the Minutes of the Town Planning Plot allocation committees and that there are no such minutes of the allocation of the suit plot by the Respondent to the Applicant.

The Respondent further contends that the suit plot is public land that was allocated to National Museums of Kenya vide a letter of allocation of plot dated 19/2/2010. The respondent further states that the Plaintiff/Applicant company was registered on 30/10/2012 which was about 2 years after the plot was allegedly allocated to the applicant and further that the Directors of the Applicant were the Officials of the former defunct Narok County Council.

I have considered the application before me and the Respondent's Replying Affidavit in opposition to the same. This being an application for injunction the grounds upon which the same can't be granted is now well settled as held in the case of **Geilla –Versus-Cassman Brown** as whether the Applicant has established a prima facie case with probability of success, whether damages will be adequate compensation and in whose favour does the balance of convenience tilt.

From the Pleadings the Applicant contends that it has been the registered owner of the suit plot which was allocated to it in the year 2010 and that it has been in occupation and possession of the suit land since 2010 having been paying rates to the Respondents. The Respondents on its part contends that the suit parcel of land is public property that was allocated to the National Museum of Kenya and the said plot could not have been allocated to the Applicant when itself was registered in 2012. However, the Respondents have not challenged the validity of the letter of allocation. The Respondents despite contending that the Directors of the Applicant were the officials of the Applicant and they may have manipulated the system to allocate themselves the parcel of land. There is no evidence placed before me to validate the said claim. Having so stated the issue of fraud is a serious issue that can duly be validated at a full hearing and thus being an Interlocutory Application, I find that the Applicant has established a prima facie case with it being the registered owner of the suit property and the Respondent having

been receiving rates dutifully since 2010 without questioning the Applicant and in view of the above I am satisfied that the Applicant has established the grounds for the grant of injunction and accordingly allow the notice of motion dated 19/4/2020.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK ON THIS 8TH DAY OF APRIL, 2021.

MOHAMED N. KULLOW

JUDGE

8/4/2021

In the presence of: -

CA:Chuma

Mr Kere for the Defendant/Respondent

Mr Meingati for the Plaintiff/Applicant