



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC. CASE NO. 83 OF 2016**

**SIDCUP ENTERPRISES LIMITED.....PLAINTIFF**

**-VERSUS-**

**JOHN SEREWA KAURAI.....1<sup>ST</sup> DEFENDANT**

**COUNTY GOVERNMENT OF NAIROBI.....2<sup>ND</sup> DEFENDANT**

**NATIONAL LAND COMMISSION.....3<sup>RD</sup> DEFENDANT**

**RULING**

At the time of filing suit, the Plaintiff filed the application dated 15/1/2016, seeking a temporary injunction to restrain the Defendants and their agents from entering or remaining on the Plaintiff's property known as L.R. No. 209/12226 Grant No. I.R 66150 ("the Suit Property"). It also seeks to restrain the Defendants from demolishing its boundary wall erected thereon or committing other acts of trespass or interfering with the Plaintiff's quiet possession of the Suit Property.

The application is premised on the grounds that the Plaintiff is the registered proprietor of the Suit Property since 18/8/1995 and that the 1<sup>st</sup> Defendant entered into the Plaintiffs property and attempted to demolish the boundary wall erected on it with the connivance of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The Plaintiff is apprehensive that unless they are restrained by an interlocutory injunction, the Defendants will continue with the unlawful acts thereby subjecting the Plaintiff to suffer irreparable harm.

The Plaintiff's Director and shareholder swore the Supporting Affidavit and annexed a copy of the title registered on 25/8/1995 in the name of the Plaintiff. The director depones that the 2<sup>nd</sup> Defendant granted the Plaintiff approval to construct a boundary wall around the Suit Property on 11/12/2014.

On or about 17/2/2015, the 1<sup>st</sup> Defendant went to the Suit Property and threatened to demolish the boundary wall that was under construction claiming that he was the beneficial owner of the Suit Property on the strength of a letter of allotment dated 1/7/1999. Based on that letter, the 2<sup>nd</sup> Defendant cancelled the approval it had given the Plaintiff to construct the perimeter fence. The Plaintiff urges the court to grant the orders sought.

The 1<sup>st</sup> Defendant swore a Replying Affidavit opposing the grant of a temporary injunction. He contends that the Plaintiff was incorporated on 27/4/2012 and could not possibly have been allocated the Suit Property in 1995 as it was not in existence then. The 1<sup>st</sup> Defendant annexed a copy of a letter from the Registrar of Companies dated 25/9/2015.

The 1<sup>st</sup> Defendant maintains that he was allocated the Suit Property by the Commissioner of Lands vide the letter dated 1/7/1999 and that he duly paid the sum indicated on the letter. He maintains that he has been paying the land rent and rates in respect of the Suit Property.

The Plaintiff filed a supplementary affidavit in which he denies the factual position stated by the 1<sup>st</sup> Defendant. The Plaintiff annexed minutes dated 25/7/2008 appointing its directors together with copies of the annual returns for the years 2008 to 2015. The Plaintiff also annexed a copy of the certificate of incorporation which shows that the Plaintiff was incorporated on 9/5/1995.

The 1<sup>st</sup> Defendant changed advocates. His new advocates filed and served a Notice to Produce on the Plaintiff requesting the Plaintiff to produce certain correspondences. The documents sought have not been supplied to date. The 1<sup>st</sup> Defendant filed Grounds of Opposition arguing that granting the orders of injunction would pre-empt the proper hearing of the suit and interfere with the 3<sup>rd</sup> Defendant's performance of its statutory duties.

The 3<sup>rd</sup> Defendant's Director of Legal Affairs and Enforcement swore its affidavit in opposition to the application for injunction. The 3<sup>rd</sup> Defendant argues that it was established pursuant to Article 68 (V) of the Constitution with the mandate to review grants of a public land to establish their propriety or legality. The 3<sup>rd</sup> Defendant argues that the Suit Property is leased public land and it is therefore held subject to the terms and conditions prescribed in the grant. The 3<sup>rd</sup> Defendant received a complaint made by the 1<sup>st</sup> Defendant. After determining that it had the jurisdiction to entertain the complaint before it, the 3<sup>rd</sup> Defendant commenced investigations and with the aim of reserving the status quo, it urged the parties to maintain the status quo until the Commission completes its investigations. The 3<sup>rd</sup> Defendant argues that new evidence has come to light that the Suit Property is a riparian reserve. The 3<sup>rd</sup> Defendant argues that the court has a duty to exercise restraint before interfering with the mandate of a Constitutional Commission since public interest militates against the court unnecessarily interfering with the mandate of the 3<sup>rd</sup> Defendant. The Commission admits that it had a time limit of 5 years to conduct the review of grants of public land. This period lapsed on 2/5/2017 and has not been extended by Parliament.

The court has considered the application, the affidavits together with the submissions of counsels. In the court's view, this is a matter fit for the making of an inhibition order forbidding the registration of any dealing with the Suit Property until this suit is heard and determined in light of the claim that the Suit Property is a riparian reserve and the claims by both the Plaintiff and the 1<sup>st</sup> Defendant that they own the Suit Property. A copy of inhibition under the seal of the court shall be sent to the Land Registrar who shall register it in the appropriate register.

The parties are directed to set down the suit for hearing for the court to make a determination on the ownership of the Suit Property. Each party shall bear its own costs.

Dated and delivered at Nairobi this 1<sup>st</sup> day of November 2017.

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Kihoro for the 1<sup>st</sup> Defendant

No appearance for the Plaintiff and the 3<sup>rd</sup> Defendant

Mr. V. Owuor- Court Assistant