



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 71 OF 2020

NAHASHON MWANGI MWAURA.....PLAINTIFF

VERSUS

NAIROBI CITY COUNTY GOVERNMENT.....1ST DEFENDANT

NAIROBI CITY COUNTY

INSPECTORATE SERVICE.....2ND DEFENDANT

MUKAB HOMES LIMITED.....PROPOSED 3RD DEFENDANT

RULING

The Plaintiff brought this suit on 15/5/2020 seeking *inter alia*, a declaration that he was the lawful owner of the land known as Plot number 1962, Eastleigh Section VII Timboroa Street and damages for the demolition of his house and the loss of household and personal possessions following the demolition of his house on 6/5/2020. The Plaintiff sued the two Defendants contending that they wrongfully entered upon his land and illegally demolished his house.

The Plaintiff filed the application dated 28/9/202 seeking to amend the plaint and join Mukab Homes Limited as the 3rd Defendant in the proceedings. Further, he sought an order to restrain the proposed 3rd Defendant from developing, transferring or in any way dealing with his plot no. 1962 and to be granted access to his land.

The application was made on the grounds that the Plaintiff's plot was only accessible through Timboroa Street through a service lane that lies between plot number 325, which belongs to the proposed 3rd Defendant, and plot number 329. The Plaintiff contended that after this court granted him orders of injunction he learned that the real beneficiary of the demolition of his house was the proposed 3rd Defendant who he claimed was now constructing on his land and had blocked the access to the Plaintiff's plot. Further, that the proposed 3rd Defendant had also encroached on part of the Plaintiff's plot. The Plaintiff averred that the proposed 3rd Defendant was purporting to construct a sewer line on the Plaintiff's land and on the dedicated service road.

The application was supported by the Plaintiff's affidavit sworn on 28/9/2020 to which he attached a copy of the letter of allotment dated 25/2/1997 vide which he was allocated the suit plot by the 1st Defendant's predecessor. He also attached a copy of the letter dated 21/7/2020 from the advocates representing the proposed 3rd Defendant and a sketch plan showing the location of the suit plot *vis a vis* the proposed 3rd Defendant's plot.

Abdikadir Hassan Adan swore the replying affidavit on behalf of the proposed 3rd Defendant in opposition to the Plaintiff's application. He denied that the proposed 3rd Defendant participated in the demolition of the Plaintiff's house and maintained that there was no basis for joining the proposed 3rd Defendant as a party to the suit. Mr. Adan averred that the service lane was unobstructed and that there was a clear walkway.

Parties filed submissions which the court has considered. The Plaintiff urged the court to allow his application and pave way for the determination of the real issues raised in the draft amended plaint. The proposed 3rd Defendant submitted that there were no grounds for it to be joined to this suit and that it did not conduct the demolition of the Plaintiff's property. It also submitted that the Plaintiff had not met the requirements for the grant of a temporary injunction.

The issues for determination is whether the court should join the proposed 3rd Defendant as a party to this suit and whether the orders of

injunction should be granted. Joinder of parties should be allowed where any relief arising out of the same act or transaction or series of acts is alleged to exist or where common questions would arise if a new suit were to be filed against the proposed party.

Although the proposed 3rd Defendant denied that its land directly neighboured the Plaintiff's land, the court notes from the sketch plan which the Plaintiff attached that the proposed 3rd Defendant's plot abuts Timboroa Road and that the Plaintiff can only access his plot through the road next to the proposed 3rd Defendant's plot. The photographs attached to the affidavit of Mr. Adan confirm that part of the access road is obstructed and that part of the construction being undertaken by the proposed 3rd Defendant seems to be encroaching on the access road.

The court is satisfied that the proposed 3rd Defendant is a necessary party in these proceedings. The Plaintiff has established a *prima facie* case with a probability of success and has also demonstrated that his access to his plot has been blocked.

The Plaintiff is allowed to amend the plaint and add Mukab Homes Limited as the 3rd Defendant in the suit. The Plaintiff will file and serve the amended plaint within 14 days of the date of this ruling.

Mukab Homes Limited or its agents are restrained from dealing with, developing, transferring or in any way interfering with the Plaintiff's possession of plot number 1962 located in Eastleigh Section VII, Timboroa Street until this suit is heard and determined. The Plaintiff is to be allowed uninterrupted access to his plot through the service lane which is the public road linking Timboroa Road in accordance with the sketch plan attached to the Plaintiff's application.

These orders will be enforced by the Officer Commanding Shauri Moyo Police Station who will provide protection and supervision.

The costs of the application will be in the cause.

Delivered virtually at Nairobi this 18th day of May 2021.

K. BOR

JUDGE

In the presence of: -

Mr. Mwangi Mburu for the Plaintiff

Mr. V. Owuor- Court Assistant

No appearance for the 1st and 2nd Defendants and the Proposed 3rd Defendant