



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 607 OF 2013

SUSAN MBEKE KASOME & 872 OTHERS.....PLAINTIFFS/APPLICANTS

=VERSUS=

NJIRU AGERIA DEVELOPMENT LIMITED.....DEFENDANT

RULING

1. This is the Notice of Motion dated 29th March 2021 brought under section 3A and 63€ of the Civil Procedure Act, Chapter 21 of the Laws of Kenya, Order 40 Rules 2 and 4, Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law.

2. It seeks orders:-

1. Spent.

2. Spent

3. That pending the hearing and subsequent final determination of the amended originating summons dated 26th August, 2013 filed herein, this honourable court be pleased to issue a temporary injunction restraining the respondent by itself, its agents, servants, employees and/or any person claiming any right whatsoever under it from entering upon, remaining thereon, removing from, wasting, subdividing, digging on, excavating, fencing, erecting any building or demolishing the applicant's structures erected thereon whatsoever or otherwise dealing with the property known as Land Reference Number 13468 situated within Nairobi City County ("the suit property) and/or in any way whatsoever interfering with the plaintiff's quiet possession, use and enjoyment of the same.

4. That the costs of this application be provided for.

3. The grounds are on the face of the application and are set out in paragraphs 1 to 13.

4. The application is supported by the affidavit of Susan Mbeke Kasome the plaintiff sworn on the 29th March 2021.

5. It appears the application is not opposed.

6. I have gone through the pleadings, the plaintiffs herein are claiming the suit property through adverse possession. The defendant is the registered proprietor of the suit property.

7. I have gone through the court record. By a ruling dated 5th June 2015 Honourable Lady Justice M. Gitumbi, after hearing the defendant's Notice of Motion dated 20th June 2014 granted the following orders:-

"That the orders be and are hereby issued restraining the plaintiffs whether by themselves, their agents, servants and/or anybody claiming under them from cutting stones, selling, alienating, entering, wasting or in any way interfering with LR No 13468 pending the hearing and determination of the plaintiffs' amended originating summons dated 26th August 2013".

8. The plaintiffs being dissatisfied with these orders preferred an appeal to the Court of Appeal. The Court of Appeal in its Judgment dated 2nd February 2018 made a finding that the issue of ownership of Land Reference Number 13468 could only be determined upon hearing the substantive amended originating summons dated 16th August 2013.

9. The Court of Appeal also directed that the suit be listed for substantive hearing of the originating summons. This judgment was delivered on 2nd February 2018. The plaintiffs were obligated to expedite the hearing of the originating summons so that their rights could be determined.

10. I have gone through the court record. The plaintiffs did nothing until December 2020. Subsequently they filed the Notice of Motion dated 29th March 2021.

11. From paragraph 5 of the supporting affidavit sworn by Susan Mbeke Kasome sworn on the 29th March 2021 it appears that the structures have already been demolished. I find that the plaintiffs/applicants have failed to demonstrate that they deserve this protection from this court. I am guided by the decision of Bosire J (as he then was) **Kenleb Cons Ltd vs New Gatitu Services Station Ltd & Another [1990] KLR 557**.

12. I find no merit in this application and the same is dismissed. The costs do abide the outcome of the originating summons. The plaintiffs are directed to expedite the hearing of the Originating summons so that these issues can be resolved.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 24TH DAY OF JUNE 2021.

.....

L. KOMINGOI

JUDGE

In the presence of:-

Mr. K. Mboya for the Plaintiffs

No appearance for the Defendant

Phyllis - Court Assistant