



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. E010 OF 2020

KENYA WILDLIFE SERVICE STAFF SUPERANNUATION SCHEME

REGISTERED TRUSTEES.....1ST PLAINTIFF

KENYA WILDLIFE STAFF RETIREMENT BENEFITS SCHEME 2006

REGISTERED TRUSTEES.....2ND PLAINTIFF

VERSUS

DYKOE ENTERPRISES LIMITED.....1ST DEFENDANT

NEPHETS INTERLINK SERVICE LIMITED.....2ND DEFENDANT

THE CHIEF LAND REGISTRAR.....3RD DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....4TH DEFENDANT

COUNTY GOVERNMENT OF NAIROBI.....5TH DEFENDANT

RULING

1. This is the Notice of Motion dated 13th July 2020 brought under order 40 rule 1, 2 and 4 order 51 rule 1 and 3 and Section 3 and 3A of the Civil Procedure Act.

2. It seeks orders:-

1. Spent.

2. Spent.

3. That the Honourable Court be pleased to grant an order of temporary injunction restraining the 1st and 2nd defendants together with their agents, servants, and/or any other person acting for them from trespassing into the plaintiffs'/applicants' parcel of land number LR No 1/287 Lenana Road, Kilimani, Nairobi or in any other way interfering with the plaintiffs'/applicants' exclusive possession, occupation and user thereof until this suit is heard and determined or until further orders of the court.

4. That 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 (8).

4. The application is supported by the affidavit sworn by Edwin Wanyonyi, Chairman of the 1st plaintiffs'/applicants' Board of Trustees, on the 13th July 2020.

5. The application is opposed. There is a replying affidavit sworn by Diana Koech, a co- director of the 1st defendant/respondent sworn on the 22nd July 2020. There are also responses filed by the 3rd to 5th defendants/respondents.

6. On the 28th July 2020 the court with the consent of parties directed that the Notice of Motion be canvassed by way of written submissions.

7. I have considered the Notice of Motion and the supporting affidavit together with the annexures. I have also considered the affidavits in response and the annexures, the written submissions filed on behalf of the respective parties and the authorities cited.

8. The issues for determination are:-

(i) Whether the plaintiffs/applicants application meets the threshold of grant of temporary injunction.

(ii) Who should bear costs of the application?

9. In an application for injunction the onus is on the application to satisfy the court that it should grant an injunction. The principle were laid down the precedent setting of **Giella vs Cassman Brown & Co. Ltd [1973] EA 358**. In the case of **Mrao Ltd vs First American Bank of Kenya Limited & 2 Others [2003] KLR 125** the Court of Appeal set out what amounts to a prima facie case. I am guided by the above authorities.

10. It is the plaintiffs'/applicants' case that they bought the suit property LR NO 1/287 Lenana Road form Ultramod Holdings Limited on 26th April 2016 for a consideration of Kshs. 520,000,000/-. That a transfer in their favour was duly registered on 16th June 2016 and they took possession in December 2016. That upon taking possession a perimeter fence was reinforced and a gate installed. They retained the services of Fidelity Security Services Ltd to guard the same.

11. The 1st defendant on the other hand contends that it is the registered owner of LR NO 1/1406, Lenana Road following a transfer by the 2nd defendant in its favour. I have gone through the replying affidavit filed on behalf of the 1st defendant. It does not state that they are in possession of the suit property.

12. I have considered the rival positions as to who owns the suit property. I find that it is in the interest of justice that the same is preserved pending the hearing and determination of the suit.

13. The issue as to how LR NO 1/287 became LR 1/1406 will be resolved during the hearing where evidence will be tendered by the parties.

14. The upshot of the matter is that the plaintiffs'/applicants' application succeeds I find merit in this application and the same is allowed in the following terms.

(a) That a temporary injunction is hereby issued restraining the 1st and 2nd defendants together with their agents, servants, and/or any other person acting for them from trespassing into the plaintiffs'/applicants' parcel of land number LR No 1/287 Lenana Road, Kilimani, Nairobi or in any other way interfering with the plaintiffs'/applicants' exclusive possession, occupation and user thereof until this suit is heard and determined.

(b) That the plaintiffs'/applicants shall not develop and or undertake any construction, or dispose of, lease out the suit property LR NO 1/287, Lenana Road, Nairobi, pending the hearing and determination of this suit.

(c) That costs of this application do abide the outcome of the main suit

It is so ordered.

Dated, signed and delivered in Nairobi on this 17th day of June 2021.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Kagicha for the Plaintiffs

Mr. Were for Mr. B. K. Khaemba for 1st – 2nd Defendants

Mr. Menge for 3rd – 4th Defendants

Mr. Karisa for Mr. G. Kithi for 5th Defendant

