



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. E244 OF 2020

RIFT VALLEY RAILWAYS WORKERS UNION (K).....PLAINTIFF

=VERSUS=

KENYA NATIONAL HIGHWAYS AUTHORITY.....1ST DEFENDANT

MINISTRY OF TRANSPORT.....2ND DEFENDANT

NATIONAL LAND COMMISSION.....3RD DEFENDANT

AND

KENYA RAILWAYS RETIREMENT

BENEFITS SCHEME.....1ST INTERESTED PARTY

RETIREMENT BENEFITS AUTHORITY.....2ND INTERESTED PARTY

KENYA RAILWAYS COPORATION.....3RD INTERESTED PARTY

RULING

1. This is the Notice of Motion dated 11th January 2021.

2. It seeks orders:-

1. Spent.

2. Spent.

3. Spent

4. That an injunction be issued against the respondents herein and or their agents, prohibiting them from further developing and or carrying out any construction and or developments on the pensioners subject property, Nairobi Railways Club LR/No 209/12088, located along Ngong Road Nairobi, until and unless a comprehensible valuation of the subject property is done and full compensation to the applicants and or the owners of the property for the value of the property to be so compulsorily acquired is done in accordance to the procedures and guidelines as are stated in the Supreme Law and the Land Act in respect of the compulsory acquisition.

5. That costs to be in the cause.

3. The grounds are on the face of the application are set out in paragraphs (1) to (10).

4. The respondents who were duly served did not file any responses and/or submissions. The 3rd interested party has filed a replying affidavit through its advocate Stanley Gitari. The same is sworn on 3rd March 2021.

5. On the 15th February 2021, the court with the consent of the parties directed that the Notice of Motion be canvassed by way of written submissions.

6. I have considered the Notice of Motion and the affidavit in support. I have also considered the responses thereto, the written submissions filed on behalf of the respective parties and the authorities cited. The issues for determination are:-

(i) Whether the applicants' application meets the threshold for grant of temporary injunction.

(ii) Who should bear costs of this application?

7. In an application for injunction, the onus is on the application to satisfy the court that it should grant an injunction. The principles were laid down in the precedent setting case 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.

8. The procedure for compulsory acquisition of interest in land is set out in Section 107 to 133 of the Land Act 2012. The Applicant has not demonstrated to this court that they have participated in the said process.

9. The applicants have also failed to demonstrate that LR NO 209/12088 is a subject of acquisition. From the gazette notice Nos 6601 and 6602 of 4th September 2020 LR NO 209/12088 is not among the properties to be acquired.

10. I am guided by the decision of **Bosire J (as he then was) in Kenleb Cons Ltd vs New Gatitu Services Station Ltd & Another [1990] KLR 557 in finding that the Applicant herein has failed to demonstrate that they deserve any protection from this court.**

11. I also find that it has failed to establish a prima facie case with a probability of success at the trial.

12. The upshot of the matter is that I find no merit in this application and the same is dismissed with no orders as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 17TH DAY OF JUNE 2021.

.....

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Munayi Isaac for the Applicant

Mr. Kimetto for Mr. Juma for the 1st Interested Party

Ms Kamene for Mr. Mulei for the 2nd Interested Party

Ms Kavagi for the 3rd Interested Party

Mr. Kamau for Mr. Motari for the Attorney General