



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC CASE NO. 18 OF 2021

ZURAH NIGHT SAKWA.....PLAINTIFF

VERSUS

NATIONAL HOUSING CORPORATION.....1ST DEFENDANT

NATIONAL LAND COMMISSION.....2ND DEFENDANT

COUNTY DIRECTOR NATIONAL HOUSING.....3RD DEFENDANT

THE HON. ATTORNEY GENERAL.....4TH DEFENDANT

RULING

The Application

1. The application dated 5/3/2021 and filed in court on 8/3/2021, has been bought under **Order 40 Rule (1)** of the **Civil Procedure Rules Sections 3A & 63(e)** of the **Civil Procedure Act**. The defendants seek the following orders:-

1. ...spent

2. ...spent

3. That this court be pleased to grant a temporary injunction restraining the defendants whether by themselves, agents and/or servants from disposing, interfering, transferring, alienating, selling and/or otherwise dealing in the suit property being land parcel Kitale Municipality Block 11/18 situate in Trans-Nzoia within the Republic of Kenya pending hearing and the determination of the suit.

4. That the OCS Kitale Police Station be directed to oversee compliance of this order.

5. That costs of this application be provided for.

2. The application is supported by the affidavit sworn on 5/3/2021 by the plaintiff. The grounds upon which the application is made are that the plaintiff acquired the land through transmission in a succession cause in Eldoret High Court; that the 1st and 3rd defendants have commenced the process of having the property registered in the name of the 1st respondent and that the 3rd respondent has threatened to evict the plaintiff from the suit property, and she might suffer irreparable loss and damage.

The Response

3. The case against the 1st and 2nd defendants was withdrawn on 12/4/2021. The 3rd and 4th defendants filed grounds of opposition and oppose the application on the grounds that the plaintiff has no *locus standi*; that the suit and notice of motion are an abuse of the court process in view of the orders of the High Court issued in **Kitale HCC Misc. Application No. E001 of 2021 - EACC vs Zurah Night Sakwa**; that the suit and notice of motion are *res judicata*; that the suit land had government houses prior to their unlawful demolition and remains public land and this court is *functus officio*; that the balance of convenience lies in preserving the suit land as was ordered in **Kitale HCC Misc. Application No. E001 of 2021 - EACC vs Zurah Night Sakwa**; that no order of injunction can be issued against the government and that the Ethics and Anti-Corruption Authority (EACC) should be enjoined in the suit.

4. The plaintiff filed her submissions on 20/4/2021. The 3rd and 4th defendants filed their written submissions on 28/4/2021.

Submissions

5. The plaintiff filed her submissions on 20th April, 2021 and the defendant on 28th April, 2021.

6. The plaintiff cites **Giella Vs Cassman Brown 1973 EA 358 and Mrao Ltd vs First American Bank of Kenya Ltd Ans 2 Others 2003 KLR 125** and avers that a *prima facie* case has been made out and that damages can not be an adequate remedy in this case. She further relies on **Michael Gitau V Pamela Savage & 4 Others Civil Appeal No 244 of 1999 (unreported)** and **Francis Githinji Karobia Vs Stephen Kageni Gitau Civil Case No 53 of 2005 (Unreported)** and avers that the plaintiff is the absolute indefeasible owner of the suit property and the certificate of lease should be taken as conclusive evidence of such ownership.

7. The 3rd and 4th defendants on their part in their very elaborate submissions aver that the tenets in the case of **Giella Vs Cassman Brown 1973 EA 358** have not been satisfied; that this court lacks jurisdiction; that the applicant lacks locus standi and that no injunction may be granted against the government.

8. The defendants rely on the cases of **Law Society of Kenya Vs Commissioner Of Lands & Others Nakuru HCCC No 464 of 2000, Alfred Njau & Others Vs City Council Of Nairobi 1982 KAR 229; Kipsiwo Community Self Help Group Vs Attorney General And 7 Others 2013 eKLR; Nguruman Ltd Vs Jan Bonde Nielsen & 2 Others CA No. 77 of 2012.**

Determination

9. I have considered the application, the response and the submissions filed the parties. The main issue arising for determination in the instant application is whether an order of injunction restraining the defendants whether by themselves, agents and/or servants from disposing, interfering, transferring, alienating, selling and/or otherwise dealing in the suit property being land parcel **Kitale Municipality Block 11/18** situate in Trans-Nzoia should issue.

10. The preliminary issue of *res judicata* raised in this matter by the respondents must however be dealt with first. I have called for and perused the cited case **Kitale HCC Misc. Application No. E001 of 2021** and found that the High Court issued an order of preservation of the suit property herein prohibiting the respondents including the applicant herein from interfering in any way with the suit land herein.

11. It is plain to see that any order of injunction given against the respondents in this suit would run contrary to that order of preservation issued by the High Court and it may be used by the applicant as a licence to interfere with the suit land. This court is not inclined to issue orders that would befoe the very clear status established by the orders of the High Court in the cited case.

10. The applicant has apparently with the intent of obtaining orders wrongfully from this court deliberately withheld from this court the fact of the existence of the High Court Case and the information has come from the respondents.

11. I find the orders sought by the applicant to be so closely related to the orders obtained by the EACC in the High Court case it has filed that it would not be seemly to even contemplate giving orders contrary to those already obtained by EACC lest the justice system become a focus of ridicule for subjecting itself to misuse by the applicant. I therefore agree with the respondents that the instant application is an abuse of the process of the court and that the application is *res judicata*.

12. On *locus standi* the respondents state that the applicant's claim is hinged on letters of administration and a certificate of confirmation of grant, and the suit property is not listed as one of the properties that formed the estate of the deceased Charles Lelechi Lugano.

13. It is stated that the applicant could not have moved the court as a beneficial owner of the suit property or as administratrix, and even if it were deemed as administratrix, she does not have the consent of the other administratrix.

14. I have looked at the copy of grant annexed and seen that there are three administrators named therein. I agree entirely with the respondent's argument.

15. It is now trite law that a single administrator is not entitled to bring proceedings in respect of an estate without the inclusion of other administrators unless the omission of the other administrators has been sufficiently explained to court beforehand.

16. The plaintiff has not demonstrated that she has any beneficial interest sufficient to enable her seek the orders sought and she can not therefore demonstrate a *prima facie* case and the possibility of irreparable loss within the two tests prescribed in **Giella -vs- Cassman Brown [1973] EA 358**.

17. Furthermore, a litigant has to demonstrate standing in any matter before the court, and where he or she represents other persons' interests that has to be expressly stated and written authority under **Order 1 Rule 13** of the **CPR** exhibited which was not done in the instant case.

18. I find that the instant application is mischievous, an abuse of the court process and has no merit whatsoever and the same is hereby dismissed with costs to the respondents.

19. I also agree with the respondents that the Ethics and Anti-Corruption Authority should be enjoined as the 5th defendant in the instant suit and I hereby order that they be so enjoined for it is only with their participation that all matters in controversy can be put to a rest.

20. The plaintiff shall amend his plaint to include the said authority within **14 days** of this ruling in default of which the suit herein shall stand automatically dismissed.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 9TH DAY OF JUNE, 2021

MWANGI NJORGE

JUDGE, ELC, KITALE.