



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC NO. E273 OF 2021

HANNAH WANJIKU GACHANJA.....PLAINTIFF

- VERSUS -

CLIFFORD NYAKOE OGALO.....1ST DEFENDANT

EMBAKASI RANCHING COMPANY LIMITED2ND DEFENDANT

RULING

1. The Plaintiff, Hannah Wanjiku Gachanja in her pleadings avers that she is the legal owner of the parcel of Land known as Nairobi Block 105/4472 which she bought from the 2nd Defendant, Embakasi Ranching Company Limited. A Title Deed is yet to be issued to her though she has taken all the necessary steps and made all the requisite payments to facilitate processing of the title deed. She states that on 19th October, 2020, the 2nd Defendant indeed wrote to the Ministry of Lands and Physical Planning confirming her to be the rightful owner of this parcel of land. She has been hopefully waiting for the title deed.

2. The 2nd Defendant had pointed out the parcel of land to the Plaintiff on the ground. The Plaintiff however, states that when she visited the ground where she had been shown by the 2nd Defendant, she was surprised to find that the 1st Defendant had encroached into the parcel of land and fenced it off with a perimeter fence. She suspects that the 1st Defendant is in the process of constructing or making plans to construct permanent structures. She is apprehensive that this will jeopardize her claim over the parcel of land.

3. The Plaintiff therefore moved to Court under Certificate of Urgency seeking various orders to preserve the land.

4. The Plaintiff's application is the Notice of Motion application dated the 27th July, 2021. It is brought under the provisions of Order 40 Rules 1 and 4 of the Civil Procedure Rules. The Plaintiff seeks 3 main Orders as follows;

a. THAT the Honourable Court be pleased to issue an injunction restraining the Defendants herein, their servants, employees and/or agents from trespassing, constructing, entering, damaging, wasting and/or interfering in whatsoever manner with the Plaintiff's parcel of land known as Plot No. P4909 now LR. No. Nairobi Block 105/4472 pending hearing and determination of this suit.

b. THAT the 2nd Defendant be compelled by an order of this court to identify and allocate the Plaintiff's bonus parcel of land on the ground.

c. THAT an order be issued to the OCS Ruai Police Station to enforce compliance of the orders (above).

d. THAT the costs of this application be provided for.

5. The application is supported by the Affidavit of the Plaintiff sworn on the 27th September, 2021 where she elaborates her claim and the sequence of events leading to the filing of this suit.

6. The Plaintiff's wording of her 1st prayer is an "**an injunction**". The application as already pointed out is brought under Order 40 of the Civil Procedure Rules. Order 40 deals with temporary injunctions and interlocutory orders. The Court's presumption therefore is that the Plaintiff is seeking a temporary injunction.

7. I must point out that a party seeking relief from the Court needs to be specific, clear and concise in regard to the nature of the relief(s) sought. The Court will however proceed on the presumption that the Plaintiff in this matter is seeking a temporary injunction having brought

the application under the provisions of Order 40 of the Civil Procedure Rules.

8. Interlocutory orders are made with the intention of keeping things in status quo until the rights of the parties are determined. The principles which the Courts must consider in deciding whether to grant a temporary injunction or not are now well settled since the case of **Giella -vs.- Cassman Brown and Company Limited (1973) E.A. 38.**

9. Having considered the uncontroverted affidavit evidence of the Plaintiff, the Court is persuaded that the Plaintiff has established a prima facie case with a probability of success.

10. In granting the order for a temporary injunction however, the Court notes from the Plaintiff's pleadings that the 1st Defendant is already in occupation of the land and has constructed a perimeter fence around the parcel of land. Granting the orders as couched in the Plaintiff's application would be tantamount to issuing an eviction order before the Court has had an opportunity to determine the case in depth by hearing and considering the evidence of all the parties or rather affording the parties an opportunity to present their case for consideration and final determination. That is not the intention of the Court at this stage of the case. The Court therefore will only issue a temporary injunction to restrain the 1st defendant from constructing or erecting any further structures on the land pending the hearing and determination of the suit.

11. In regard to the prayer to compel the 2nd Defendant to identify and allocate the Plaintiff the bonus parcel of land, the Court is of the view that such an order cannot not issue at this stage.

12. The gist of this ruling is that the Court hereby issues an order of temporary injunction restraining the 1st Defendant from constructing or erecting any other structures on the parcel of land L.R. NO. Nairobi Block 105/4472 pending the hearing and determination of this suit.

13. The costs of this application shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2021

M.D. MWANGI

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Ms. Nyaga holding brief for Ms. Thungu the Plaintiff/Applicant

Mr. Nyabena for the 1st Defendant/ Respondent

No appearance for the 2nd Defendant/ Respondent

Court Assistant; Hilda

M.D. MWANGI

JUDGE