



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. E092 OF 2021

BARNABAS ASEMBO OKECH.....PLAINTIFF

VERSUS

NAIROBI CITY COUNTY.....1ST DEFENDANT

NAIROBI METROPOLITAN SERVICES.....2ND DEFENDANT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT

RULING

1. This is the Notice of Motion dated 10th March 2021 brought under section 1A, 1B and 3a of the Civil Procedure Act, Chapter 21 of the Laws of Kenya and Order 40 and 51 of the Civil Procedure Rules of 2010.

2. It seeks orders:-

1. Spent.

2. Spent.

3. That pending the hearing and determination of this suit, injunction do issue to restrain the Defendants by themselves, their servants, workmen or agents or otherwise from demolishing, disposing of and/or interfering in any way with the parcel of land known as Title No IR 224438 situate in the city Nairobi within Nairobi Area District containing by measurement nought decimal two seven eight nought hectares (0.2780 hectares) and being land reference number 209/21868 as delineated on land survey plan 410568 located near Pumwani Maternity Hospital.

4. That, in the alternative and without prejudice to the foregoing orders, pending the hearing and determination of this application interpartes, that the status quo (that is, continue peaceful occupation of the suit property by the plaintiff) in respect of parcel of land known as Title No IR 224438 situate in the City of Nairobi within Nairobi Area District containing by measurement naught decimal two seven eight naught hectares (0.2780 hectares) and being land reference number 209/21868 as delineated on land Survey Plan Number 410586 located near Pumwani Maternity Hospital.

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

4. The application is supported by the affidavit of Barnabas Asembo Okech, the plaintiff/applicant, herein sworn on the 10th March 2021.

5. The application is opposed. There is a replying affidavit sworn by Erick Odhiambo Obwao, the County Solicitor of the 1st defendant/respondent, sworn on the 1st April 2021.

There is also a replying affidavit filed on behalf of the 2nd and 3rd defendants.

6. The court with the consent of parties directed that the application be canvassed by way of written submissions.

7. I have considered the notice of motion and the affidavit in support. I have considered the affidavit in reply, the written submissions filed on behalf of the parties and the authorities cited. The issues for determination are:-

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

(ii) Who should bear costs.

8. At this juncture, it is necessary to briefly examine the legal principles governing the applications of this nature. 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 president setting case of **Giella vs Cassman Brown & Co. Ltd [1973] EA 358**. In the case of **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] KLR 125**, the Court of Appeal stated what amounts to a prima facie case. I am guided by the above authorities.

9. In the case of **Kenleb Cons. Ltd vs New Gatitu Services Ltd & Another [1990] KLR 557** Bosire J (as he then was) held that:-

“to succeed in an application for injunction an applicant must not only make a frank and full disclosure of all relevant facts to the just determination of the application but must also show that he has a right, legal or equitable, which requires protection by injunction.”

10. It is the plaintiff's case that he is the registered proprietor of the suit property. That he has been in possession from 2004 to date.

11. The 1st defendant on the other hand states that it did not allocate the suit property to the plaintiff.

12. The plaintiff has only annexed a certificate of title issued on 4th November 2020 and a letter of allotment. He did not adduce any evidence to show how he acquired the suit property. It is his word against the 1st defendant's.

13. The plaintiff submitted that the house was demolished on the 11th June 2021. It appears this application has been overtaken by events.

14. I find that the Plaintiff/Applicant's application fails. The same is not merited and it is dismissed. The costs do abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 21ST DAY OF OCTOBER 2021.

.....

L. KOMINGOI

JUDGE

In the presence of:-

Ms Kinyanjui for the Plaintiff

Ms Odhiambo for Ms Mogusu for the 1st Defendant

Mr. Motari for the 2nd and 3rd Defendants

Steve - Court Assistant