



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO E132 OF 2020

FRANCIS KIAMBI KIRIIRO.....PLAINTIFF

VERSUS

NAIROBI COUNTY GOVERNMENT.....DEFENDANT

LIKAM OLEKIAMBU.....1ST INTERESTED PARTY

VICTOR OCHIENG OGWENO.....2ND INTERESTED PARTY

JOHN ONYANGO WASIANGA.....3RD INTERESTED PARTY

THE NATIONAL LANDS COMMISSION.....4TH INTERESTED PARTY

DIRECTOR OF SURVEYS

MINISTRY OF LANDS AND PHYSICAL PLANNING.....5TH INTERESTED PARTY

THE CABINET SECRETARY

MINISTRY OF LANDS AND PHYSICAL PLANNING.....6TH INTERESTED PARTY

RULING

1. Through a further amended plaint dated 18/1/2021, the plaintiff, **Francis Kiambi Kiriiro**, contends in the plaint that through a letter of allotment dated 23/6/2009, the defunct Nairobi City Council allocated to him **Plot No C3** located in **Phase 1 of Embakasi Township**, being part of **LR No 2935/R [the suit property]**. He duly accepted the allotment and paid the moneys stipulated in the letter of allotment. His legitimate expectation was that upon accepting the allocation by complying with the terms set out in the letter of allotment, he would acquire ownership and peaceful possession of the suit property. The allotting authority did not, however, assist him to take possession of the suit property. Despite his requests to the successor of the defunct Nairobi City Council to assist him take possession of the suit property, the assistance was not forthcoming. Instead, the Lands Department of the Nairobi City County Government wrote to him indicating that they did not recognize the allotment because the suit property had been allotted by the County Government to squatters of **Dafur Dupoto Settlement Scheme**. Subsequent correspondence from the Lands Department of the Nairobi City County Government indicated that the County Government did not have any records supporting the allocation to the plaintiff. He subsequently realized that survey and titling in the scheme was underway.

2. Aggrieved, he brought this suit seeking the following reliefs:

a) A declaration that the plaintiff is the absolute and beneficial owner of the suit property known as Plot Number C3 Embakasi Township (2935/R) by virtue of a lease granted by the Nairobi City Council.

b) A permanent injunction restraining the defendant either by themselves, their servants, employees or agents from disposing, transferring, alienating, occupying or otherwise dealing with the suit property known as Plot Number C3 Embakasi Township (2935/R).

c) A mandatory injunction compelling the defendant to show the plaintiff the beacons setting out the subject land boundaries and to issue the plaintiff with the title documents over the suit property being Plot Number C3 Embakasi Township (2935/R) within 30 days from the date of the order of this honorable court.

d) General and exemplary damages.

e) Costs of this suit on a full indemnity basis.

f) Any other or further remedy that the court may deem fit to grant.

3. Further, the plaintiff brought a notice of motion dated 3/12/2020 seeking the following interlocutory reliefs:

a) The court be pleased to restrain the 5th interested party from issuing the deed plan in respect of Land Reference Number 2935/R until the 1st respondent has excised 8.5 acres from the said parcel of land belonging to the plaintiff and referred to as Plot Number C3 Embakasi Township pending the hearing and determination of this application.

b) The court be pleased to restrain the 5th interested party from issuing the deed plan in respect of Land Reference Number 2935/R until the 1st respondent has excised 8.5 acres from the said parcel of land belonging to the plaintiff and referred to as plot number C3 Embakasi Township pending the hearing and determination of this suit.

c) Pending the hearing and determination of this application, a temporary order of injunction do issue restraining the respondent and the interested parties whether by themselves or their representatives, servants, agents and/or assigns from howsoever selling, alienating, trespassing onto and/or in any manner whatsoever interfering with or otherwise dealing with the property known as Plot Number C3 Embakasi Township Land Reference Number 2935/R (Dafur Dupoto Scheme).

d) pending the hearing and determination of this suit, a temporary order of injunction do issue restraining the respondent and the interested parties whether by themselves or their representatives, servants, agents and/or assigns from howsoever selling, alienating, trespassing onto and/or in any manner whatsoever interfering with or otherwise dealing with the property known as Plot Number C3 Embakasi Township Land Reference Number 2935/R (Dafur Dupoto Scheme).

e) costs of this application be provided for.

4. The said notice of motion is the subject of this ruling. It was supported by the applicant's affidavit sworn on 3/12/2020. He deposed in the said affidavit that he was relying on the notice of motion dated 16/9/2020. It is, however, noted from the court record that on 8/2/2021, the plaintiff's notice of motion dated 16/9/2020 was marked withdrawn at the behest of the plaintiff.

5. The case of the defendant was that it did not dispute the existence and allotment to the plaintiff by the City Council of Nairobi (now defunct) regarding Plot Number C3, Embakasi Township, Land Reference Number 2935/R. Its position was that it had begun the survey process to the land under the Scheme and once survey process was done, every member would be issued with ownership documents. It contended that the plaintiff's application was premature and misinformed.

6. The 5th and 6th interested parties contended that there was no material evidence placed before this court to show that the 5th interested party is issuing a deed plan in respect of Plot Number C3, Embakasi Township, Land Reference Number 2935/R and that the plaintiff's claim was merely speculative, having not attached evidence of a beacon certificate issued to him.

7. The application was canvassed by way of oral submissions. Mr Kabugu, learned counsel for the plaintiff, submitted that the plaintiff was a member of Dafur Dupoto Settlement Scheme and he was issued with a letter of allotment after paying requisite fees to the defendant. He further submitted that there was an attempt by the National Land Commission to compulsorily acquire the land and he was apprehensive that he would lose his land.

8. Mr Wachira, learned counsel for the defendant, submitted that the application was premature and the defendant did not dispute the existence of the allotment letter. It was his further submission that once the survey was complete, titles would be processed in the names of the allottees.

9. Ms Fatma, learned counsel for the 5th and 6th interested parties, submitted that the plaintiff had not met the threshold for an injunction and that the plaintiff had failed to exhibit relevant documents to demonstrate that the Director of Surveys was about to issue deed plans.

10. The court has considered the application, the replying affidavit, grounds of opposition, the parties' respective submissions, the relevant legal framework, and the applicable jurisprudence on the key issue falling for determination in the application. The plaintiff's application dated 3/12/2020 is principally a plea for interlocutory injunctive reliefs restraining the defendant and interested parties from selling, alienating, trespassing onto and/or in any manner whatsoever interfering with or otherwise dealing with the property known as Plot Number C3 Embakasi Township Land Reference Number 2935/R. The key question in this application therefore is whether the applicant has satisfied the criteria upon which our courts issue interlocutory injunctive relief.

11. The principles upon which our trial courts exercise jurisdiction to grant interlocutory injunctive relief are well-settled. First, the applicant is required to demonstrate a *prima facie* case with a probability of success. Secondly, the applicant is required to demonstrate that unless the interlocutory injunctive relief is granted, he would stand to suffer damage that may not be remedied through an award of damages. Thirdly, should the court be in doubt as to whether the applicant has satisfied the above two requirements, the application is to be determined based on the balance of convenience. [see *Giella v Cassman Brown (1973) EA 358*]. Lastly at this interlocutory stage, the court does not make conclusive or definitive pronouncements on the substantive issues.

12. The application under consideration was supported by an affidavit sworn on 3/12/2020. The applicant deposed in the said supporting affidavit that he would crave for leave of the court to rely on his preceding notice of motion dated 16/9/2020. What emerges from the court

record is that the applicant caused the notice of motion dated 16/9/2020 to be withdrawn on 8/2/2021. The affidavit sworn on 3/12/2020 did not contain any evidence relating to any form of threat to the applicant's interest, capable of forming the basis for an injunctive order against any of the defendants. Consequently, in the absence of supporting evidence demonstrating that there is real continuing injury or threat of injury to the applicant's alleged interest in the suit property, the applicant cannot be said to have demonstrated a *prima facie* case with a probability of success.

13. Similarly, in the absence of a proper supporting affidavit, the plaintiff cannot be said to have discharged his obligation in relation to the second limb of the requirements in **Giella v Cassman Brown**.

14. The result is that the plaintiff's application dated 3/12/2020 is rejected for lack of merit, principally because the supporting affidavit was bare and did not contain proper evidence to support the allegations made in the plaint and in the notice of motion.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 14TH DAY OF OCTOBER 2021

B M EBOSO

JUDGE

In the presence of: -

Ms Wangui for the Defendant

Court Assistant: Lucy Muthoni

NOTE:

This application was heard and a ruling date fixed when I was stationed at Nairobi (Milimani) Environment and Land Court Station. Subsequent to that, I was transferred to Thika Environment and Land Court Station. This is why I have delivered the ruling virtually at Thika.

B M EBOSO

JUDGE