



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. E049 OF 2020

IBRAHIM GATERI PETER.....1ST PLAINTIFF

DAVID NGARUIYA.....2ND PLAINTIFF

JULIUS MUNENE THUO.....3RD PLAINTIFF

JOHN GATITHI.....4TH PLAINTIFF

MARGARET MASIBO.....5TH PLAINTIFF

MARY WAMBUI.....6TH PLAINTIFF

DANIEL KARANJA MBUGUA.....7TH PLAINTIFF

(Being officials of Buruburu River Bank

(CITY CARTON) PLOT OWNERS ASSOCIATION and

suing on their behalf and on behalf of 43 Members of the Association)

=VERSUS=

ALEXANDER WAWERU.....1ST DEFENDANT

SAMUEL KAMAU KIVUVA.....2ND DEFENDANT

ANNA WAMBUI NJOGU.....3RD DEFENDANT

ANTHONY IRUNGU.....4TH DEFENDANT

PETER MUIRURI.....5TH DEFENDANT

NICHOLAS KIAL.....6TH DEFENDANT

JAMES KIVUVA.....7TH DEFENDANT

PERIS WAIRIMU.....8TH DEFENDANT

JULIUS NDUNGU.....9TH DEFENDANT

PATRICK MAINA.....10TH DEFENDANT

JOHN KIMUNGU.....11TH DEFENDANT

(Being officials of Buruburu Riverside S.H.G. Committee)

NAIROBI CITY COUNTY GOVERNMENT.....12TH DEFENDANT

THE CHIEF LAND REGISTRAR, NAIROBI.....13TH DEFENDANT

CABINET SECRETARY, MINISTRY OF ENVIRONMENT

AND NATURAL RESOURCES.....14TH DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....15TH DEFENDANT

RULING

1. Before me is a Notice of Motion dated 14.8.2020 where the Plaintiffs/Applicants are seeking:

“That pending hearing and determination of the main suit, an order of temporary injunction do and hereby issues restraining the Defendants whether by themselves, their agents, servants, employees, proxies and/or any person claiming under them from alienating, selling, transferring, trespassing, demolishing, evicting, and/or otherwise howsoever from interfering with the Plaintiff’s ownership, quiet possession and enjoyment of their plots within Buruburu Riverbank Settlement Scheme (City Carton).”

2. The Applicant identify themselves as more than 200 Plot Owners of the informal settlement scheme whereby on 14.10.2002, the Town Planning Committees allocated each Settler a parcel of land to the tune of 0.40 hectares. They were duly issued with the allotment letters as per the part development plan.

3. The Applicants proceeded to occupy the suit parcels thereby erecting permanent and semi-permanent buildings and they have been in occupation of the said plots.

4. However and unknown to the Plaintiffs and with the intent of defrauding them, the 1st – 11th Defendants formed an Association with a strikingly similar name to that of the Plaintiffs’ being Buruburu Riverside SHG Committee (hereinafter “the Defendants’ Association”) and in cohorts with the 1th Defendant, secretly applied for and caused a re-planning of the Plaintiffs’ settlement Schemae leading to a fraudulent issuance of other Allotment Letters in the year 2012 and 2014 over the Plaintiffs’ Plots with the effect of pushing them and/or dislodging them from their plots.

5. Pursuant to the fraudulent allotment letters issued by the 12th Defendant, the members of the Defendants’ Association have commenced forceful demolitions of the Plaintiffs’ houses and properties, evicting them from their allotted plots. This provocation has caused unprecedented tension and if undeterred might lead to a serious security situation on the settlement scheme.

6. The Plaintiffs are also apprehensive that the 13th Defendant is in the process of issuing Certificates of Lease to members of the Defendant’s Association in a rush to defeat the Plaintiffs’ claim.

7. The 1st – 11th Defendants have opposed the application vide the Replying Affidavit sworn by one Alexander Waweru on 1.12.2020. He identifies himself as the Chairperson of the 700 members of the outfit known as Buruburu Riverside Self Help Group (1st – 11th Defendants). He contends that the group members are all residents of the informal Settlement Scheme.

8. It is averred that the members had no official titles or registered interest in the various plots which they occupy until the 1st Defendant through its town planning committee through a resolution of 17.3.2020 initiated a project to formalize the occupation of the Estate and prepared a Part Development Plan (PDP) of Buruburu River Side Settlement Scheme Uhuru Ward Buruburu Phase One. The intention was also geared towards issuing the residents with leases.

9. The 1st – 11th Defendants aver that the project has been implemented and all the members of the estate including the Plaintiffs have been issued with allotment letters.

10. The 12th Defendant filed a replying affidavit dated 10.9.2020 through its County Attorney one Lydiah Kwaboka where it has generally denied the claims of the Applicants averring that there is no conflict between the Plaintiffs and the 1st – 11th Defendants. The 12th Defendant added that no demolitions have taken place.

11. For the 13th-15th Defendants, I did not trace any documents filed in opposition to the application. Only a memorandum of appearance was filed dated 24.11.2020.

I have considered all the arguments of the rival parties including the submissions of the Applicant. To grant or not to grant the injunction orders is the issue for determination. The law relating to the issuance of interlocutory injunction is set out under **Order 40(1) (a) and (b) of the Civil Procedure Rules 2010** .

12. In the Court of Appeal case of **National Bank of Kenya Limited v Juja Coffee Exporters Limited [2021] eKLR**, the court had this to say on applications for injunctions;

“In keeping with the long-standing principles in Giella vs. Cassman Brown Co Ltd [1973] E.A. 358, the grant or refusal of an interlocutory injunction is a matter of exercise of judicial discretion and an applicant is required to show a prima facie case with a probability of success; secondly, that it would suffer irreparable harm which would not be adequately compensated by an award of damage; and lastly if the court was in doubt, to determine the application on a balance of convenience”.

13. The first question to determine is whether the Plaintiff has established a prima facie case, See-**Mrao Ltd v First American Bank of Kenya Ltd & 2 Others[2003] eKLR**. In the case of **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR**, the court stated thus:

*“We reiterate that in considering whether or not a prima-facie case has been established, **the court does not hold a mini trial and must not examine the merits of the case closely (empasize added)**. All that the court is to see is that on the face of it, the person applying for an injunction has a right which has been violated or is, threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima-facie case. The applicant need not establish title; it is enough if he can show that he has a fair and bonafide question to raise as to the existence of the right which he alleges. The standard of proof of that prima-facie case is on a balance or, as otherwise put, on a preponderance of probabilities”.*

14. In the current scenario, the Applicants claim to be in occupation of the suit property, but so does the 1st -11th Respondents. The court shall not delve into contested issues appertaining to rights and interests in the suit land at this interlocutory stage. In the circumstance, I give an order for the **maintenance of status quo** appertaining at the time of delivery of this ruling. Costs shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF OCTOBER, 2021 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Mr. Mburu for the Plaintiff/Applicant

M/S Gachugu holding brief for Mr. Ambani for 1st–11th Defendants

Court Assistant: Eddel