



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. E139 OF 2020

SISTERS OF THE APOSTOLIC CARMEL REGISTERED TRUSTEES.....PLAINTIFF

VERSUS

EMBAKASI RANCHING COMPANY LIMITED.....1ST DEFENDANT

MICHAEL NJOROGE NGUGI.....2ND DEFENDANT

MINISTRY OF LANDS.....3RD DEFENDANT

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

RULING

1. The plaintiff brought this suit through a plaint dated 21/9/2020. It sought the following verbatim orders against the defendants:

a) A permanent injunction restraining the defendant by himself (sic), servants and/or agents from dealing with the plots previously known as V.3549, 3550, 3551 and 3552 now Nairobi Block 105/5327, 5330, 5342 and 5345.

b) A declaration that the plaintiff is the absolute and legal owner of the property plots previously known as V.3549, 3550, 3551 and 3552 now Nairobi Block 105/5327, 5330,

5342 and 5345.

c) An order that the 1st defendant to issue all the requisite documents to the plaintiff for transfer of the suit plots previously known as V.3549, 3550, 3551 and 3552 now Nairobi Block 105/5327, 5330, 5342 and 5345.

d) An order to the 3rd defendant to cancel and/or reverse the lease documents if any issued to the 2nd defendant.

e) Costs of the suit.

f) Any other relief this honorable court may deem fit and expedient to grant.

2. Contemporaneous with the plaint, the plaintiff filed a notice of motion dated 21/9/2020 seeking the following interlocutory reliefs:

1. That this honorable court be pleased to grant orders inhibiting any dealing with the suit plots previously known as V.3549, 3550, 3551 and 3552 now Nairobi Block 105/5327, 5330, 5342 and 5345 pending the hearing and determination of this application.

2. That this honorable court be pleased to issue a temporary injunction against the defendants/respondents by themselves, their servants and/or agents or any person acting by or through them from alienating, selling, offering for sale, subdividing, putting up construction or in any way interfering on the parcel plots previously known as V.3549, 3550, 3551 and 3552 now Nairobi Block 105/5327, 5330, 5342 and 5345 being the suit property pending the hearing and determination of this suit.

3. That pending the hearing and determination of this suit the defendants/respondents their servants and/or agents or otherwise howsoever be restrained from interfering with the plaintiff's/applicant's quiet enjoyment, use, possession and occupation of the suit property.

4. Costs be provided for.

3. The above application is the subject of this ruling. The application was supported by the affidavit of **Sister Winifrida Miranda** sworn on 21/9/2021. The plaintiff's case was that in or about the year 2004, they purchased twenty four (24) plots in Embakasi, Nairobi. Nine (9) of the plots were purchased from the 1st defendant while fifteen (15) were purchased from individual sellers. They took possession of the twenty four (24) plots and erected a perimeter wall round the plots. In the years 2004 and 2007, they procured development approvals to put up a school, a convent, a training centre, and residential houses on the said plots. They erected the said developments and they were issued with certificates of occupation. The school was operationalized and had a student population of 1500 pupils as at the time of bringing this suit. In September 2015, they paid Kshs 1,400,000 to the 1st defendant as fees for site visit and beacon certificates for twenty (20) plots. They had faithfully been paying rates relating to the twenty four (24) plots.

4. The plaintiff further contended that the 1st defendant had neglected/failed/ignored to supply them with documentations relating to four (4) of the plots, previously designated as V3549, 3550, 3551 and 3552 and now surveyed as Nairobi Blocks 105/5327, 5330, 5342 and 5345 respectively, despite their several requests. They subsequently noticed from a list issued by the 1st defendant that their said four plots had been allocated to the 2nd defendant. Aggrieved, they brought the instant suit and application.

5. The application was opposed by the 1st defendant's through a replying affidavit sworn on 14/6/2021 by **Walter Kigera Waireri**. He deposed that he was the Vice-chairman of the 1st defendant. He added that the plaintiff was never allocated Plot Nos V.3549, 3550, 3551 and 3552 now surveyed as Nairobi Block 105/5327, 5330, 5342 and 5345. He further deposed that the plaintiff only owned 20 plots for which they had availed proof of ownership and their claim over plot numbers V.3549, 3550, 3551 and 3552 now surveyed as Nairobi Block 105/5327, 5330, 5342 and 5345 had no basis as they did not purchase the said four (4) plots.

6. The 2nd defendant opposed the plaintiff's application through a replying affidavit dated 10/12/2020 sworn by himself. He deposed that he was the owner of Plot Nos P.4117, P4118, P4175 and P 4176 now surveyed as Nairobi Block 105/5327, 5330, 5342 and 5345. He added that he bought Plot Numbers P4175 and P 4176 from **Edward Oloo** in the year 2000. He exhibited a certificate of ownership issued to him by the 1st defendant. He added that in the year 2010, he bought Plot Numbers P.4117 and P4118 from **Grace Helidah Oganga** and exhibited certificates issued to him by the 1st defendant.

7. The application was canvassed through submissions dated 29/1/2021. Counsel for the plaintiff identified the following as the five issues falling for determination in the application: (i) whether the applicant took possession/occupation of the suit plots in the year 2004; (ii) whether the applicant had heavily developed the suit property (*sic*); (iii) whether there was collusion between the 1st and 2nd defendant to disposes the applicant the suit plots; (iv) whether the applicant's plots were distinct and separate from the 2nd defendant's plots; and (v) whether the 2nd defendant had ever approached the applicant on the issue of selling the suit property (*sic*) in 2012.

8. Counsel submitted that the plaintiff took possession of the plots in the year 2004 and that the plaintiff developed the plots by constructing a primary school, a sisters' convent and a resurrection center. He further submitted that there was collusion between the 1st and 2nd defendants to disposes the applicant the four plots; V3549, 3550, 3551 and 3552 and now surveyed as Nairobi Blocks 105/5327, 5330, 5342 and 5345 respectively. Counsel added that the plots which the 2nd defendant was trying to identify as P4117, 4118, 4175 and 4176 were, on the ground, the same as the plaintiff's plot previous identified as Plot Nos V3549, 3550, 3551 and 3522 and now surveyed as Nairobi Block 105/5327, 5330, 5342 and 5345 respectively. Lastly, counsel submitted that the plaintiff had never offered to purchase the four plots from the 2nd defendant.

9. The 2nd defendant filed written submissions dated 19/2/2021. Counsel for the 2nd defendant identified the main issue for determination as: whether the plaintiff had met the conditions for granting of interlocutory injunctive orders. He submitted that the plaintiff had not met the conditions for granting of injunctive orders.

10. **The court** has considered the application, the response to the application, and the parties' respective submissions. It has also considered the relevant legal framework and principles applicable to the key question in this application. The single question falling for determination in this application is whether the plaintiff has satisfied the criteria for grant of an interlocutory injunction. The said criteria was laid down in **Giella v Cassman Brown & Company Limited (1973) EA 358**. The plaintiff was required to demonstrate a prima facie case with a probability of success. Secondly, the plaintiff was required to demonstrate that they would stand to suffer irreparable injury which may not be adequately compensated by an award of damages if the injunctive order is not granted. Lastly, were the court to be in doubt, the application is to be determined on a balance of convenience. Lastly, at this stage the court does not make conclusive or definitive pronouncements on the key issues in the dispute.

11. The plaintiff is a religious congregation of sisters. They contend that they acquired a total of 24 plots in Embakasi in 2004 and they have been in possession of the 24 plots since then. They further contend that they have developed the 24 plots. Their gravamen is that four out of the twenty four (24) plots have been surveyed and registered as properties of the 2nd defendant. The 2nd defendant contends that he purchased the four plots and the four plots were lawfully assigned to him. He adds that titles relating to the four plots have now been issued in his name. He says that his titles are protected under the law.

12. Given the above circumstances, there are doubts about the rival allegations. The court therefore takes the view that this application is one to be decided on a balance of convenience. In so doing, the court will focus on preserving the four plots and fast-track the disposal of the substantive dispute. The balance of convenience favours preservation of the suit properties as opposed to injuncting one party in favour of the other.

13. Consequently, the plaintiff's application dated 21/9/2020 is disposed in the following terms:

a) There shall be no dealings in Title Numbers: (i) Nairobi Block 105/5327; Nairobi Block 105/5330; Nairobi Block 105/5342; and Nairobi Block 105/5345; for a period of twelve months from today.

b) There shall be no further developments on the said parcels of land for a period of 12 months from today.

c) The plaintiff shall prepare this suit for hearing and determination within the said period of 12 months.

d) Costs shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 12TH DAY OF OCTOBER 2021

B M EBOSO

JUDGE

In the Presence of: -

Mr C K Chege for the plaintiff

Mr Muriuki for the 1st 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 from Thika.

B M EBOSO

JUDGE