



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYAMIRA**

**ELC CASE NO. 75 OF 2021**

**{Formerly in the Environment & Land Court at Kisii Case No. 9 of 2020}**

**FLORENCE MORAA MANDUKU (Suing as the personal representative of the estate of**

**HEZRON MANDUKU Deceased).....PLAINTIFF**

**VERSUS**

**COUNTY GOVERNMENT OF NYAMIRA.....DEFENDANT**

**RULING**

This is an Application brought under Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act and Order 40 Rules 1(a) and 2(1) of the Civil Procedure Rules. The same is dated 9/4/20 and seeks the following orders: -

- 1) **THAT the application herein be certified urgent and the same be heard Ex-parte in the first instance.**
- 2) **THAT pending the hearing and determination of the instant application, the Honourable Court be pleased to grant an interim order of injunction restraining the Defendant/Respondent, acting through its agents, servants and/or anyone acting under its authority, from entering upon, trespassing onto, taking possession, demolishing property, building a road and/or in any other way, whatsoever, interfering with the Plaintiff's/Applicant's rights over the suit property KEROKA TOWNSHIP PLOT NO. 2 'B'.**
- 3) **THAT pending the hearing and determination of this suit, the Honourable Court be pleased to grant an order of injunction restraining the Defendant/Respondent, acting through its agents, servants and/or anyone acting under its authority, from entering upon, trespassing onto, taking possession, demolishing property, building a road and/or in any other way, whatsoever, interfering with the Plaintiff's/Applicant's rights over the suit property KEROKA TOWNSHIP PLOT NO. 2 'B'.**
- 4) **THAT costs of this application be borne by the Respondent.**
- 5) **THAT such further and/or other orders be made as the court may deem fit and expedient.**

The same is also supported by an Affidavit sworn on the same date in which the Plaintiff states in a nutshell that her late husband was allotted **LR NO. KEROKA TOWNSHIP NO. 2. 'B'** vide allotment letter dated 27/8/13 registered as the absolute owner. To enable her commence this action the Plaintiff sought letters of Administration Ad Litem which were issued in Kisii Chief Magistrate's Court **Succession Cause No. 103 of 2020**. She further states that the Defendant which gave the Plaintiff's husband the allotment letter is determined to compulsorily acquire and/or take over the suit property at any expense in complete disregard to her legal title. The Defendant has also sanctioned demolition of the storey building thereon under the guise of constructing a road which actions if carried out would dispossess the Plaintiff besides depriving her any benefit from the suit land. She also says that such illegal and irregular activities would be unconstitutional. When the matter came to court before my sister Honourable Lady Justice Jane M. Onyango Orders were granted in terms of prayer number 2 after the application was certified urgent on 14/4/20 and the Plaintiff was ordered to serve the same upon the Defendant for inter-partes hearing. Despite being granted leave to file a further Affidavit on 3/11/20 the Plaintiff/Applicant has never filed one nor did she file any written Submissions on or before 29/07/20. According to the Defendant's Replying Affidavit sworn and filed on 28/7/2020 the Defendant disputes the Plaintiff's claim and thrashes it as mere speculations and suspicions not supported by cogent evidence. Mr. Zablon Ondari, the County Executive Committee Member in charge of Land, Housing, Physical Planning and Urban Development in the County Government of Nyamira depones that the Plaintiff's property **KEROKA TOWNSHIP NO. 2. 'B'** is not among the parcels to be affected by the opening up of public roads within Nyamira County and particularly at Keroka market and that the only targeted land in the opening up of public roads in Keroka is restricted to parcel number **EAST KITUTU/MWAMANG'ERA/1142** and the Plaintiff's parcel does not fall

under it. The Defendant therefore depones that the Applicant's prayers are not deserved and that her Application should therefore be dismissed with costs.

It is indeed true that the Plaintiff/Applicant has not brought to court any convincing evidence that her property is at risk of being demolished. Further, the Defendant has demonstrated that it has never imagined let alone commenced the demolition of the Plaintiff's property. I agree with the Defendant that the Plaintiff's fears are imaginary and unfounded. It could be that having witnessed demolitions or Notices of demolitions being served in the neighbourhood, the Plaintiff expected that she was next. This is human and natural consequence and the court would therefore not be harsh on her for running to court for protection. Being a widow and feeling that she may not have anywhere else to go to, the Plaintiff's fears are understandable.

The court therefore finds that the orders sought are as a result of suspicions and skepticism arising from the fact that the County Governments all over the Country have descended on people who are perceived to have developed their property on/or encroached on land that does not belong to them whether true or not. But this is not a justification to run to court without having been issued with a Notice of such demolition. The court will take cognizance of the fact that the Defendant has sworn not to touch on the Plaintiff's property now or in future. So be it. It is therefore unnecessary and superfluous to issue the orders sought. Due to the apprehensions I have mentioned above on the part of the Plaintiff, I will not order her to pay the costs of the Application dated 9/4/20 which is hereby disallowed.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 7TH DAY OF DECEMBER, 2021.**

**MUGO KAMAU**

**JUDGE**

**In the Presence of: -**

**Court Assistant: Sibota**

**Plaintiff: N/A**

**Defendant: N/A**