



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 17 OF 2020

SOLOMON K. SONGOK.....1ST PLAINTIFF

SHADRACK NGETICH.....2ND PLAINTIFF

DANIEL LAGAT.....3RD PLAINTIFF

FELIX KIPKINYORI.....4TH PLAINTIFF

TRUPHENA J. RUTO.....5TH PLAINTIFF

HALIMA KOSGEL.....6TH PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF UASIN GISHU.....DEFENDANT

RULING

[MOTION DATED 6TH APRIL, 2020]

1. The Plaintiffs commenced this proceedings against the Defendant through the Plaint dated 6th April, 2020 filed contemporaneously with the Motion under Certificate of Urgency of even date, seeking for the Defendant to be restrained from ***“interfering with occupying, selling, encumbering, road construction and or dealing with land parcels Uasin Gishu/Tapsagoi Settlement Scheme/258, 721, 906 and 910, pending the hearing and determination of the suit.”*** The application is based on the six (6) grounds marked (a) to (f) on its face and is supported by the affidavits sworn by **Solomon K. Songok**, the 1st Plaintiff, on the 6th April, 2020 and 19th May, 2020.

2. The application is opposed by the Defendant through the replying affidavit sworn by **Barnabas K. Too**, the Defendant’s Chief Officer Roads, Transport, Energy and Public Works, sworn on the 13th May, 2020.

3. That through the directions issued by the Court, the learned Counsel for the Plaintiffs and Defendant filed and served their written submissions dated the 14th April, 2020 and 14th May, 2020 respectively.

4. **(A)** The Plaintiffs’ case is that they have satisfied the requirements of **Order 40(1)(a) and (b) of the Civil Procedure Rules** and the principles set out in the case of ***Giella Vs Casman Brown (1973) E. A. 358*** that are required to be established before injunctive order can issue. That they have annexed a copy of title deed for ***Uasin Gishu/Tapsagoi Settlement Scheme/258*** in the name of 1st Plaintiff, and copies of sale agreements under which the 2nd to 6th Plaintiffs acquired proprietary interests over the portions of the other parcels of land described therein. That accordingly, they have proprietary interests as bona fide beneficial proprietors of the said parcels and their rights should be protected. That the order prayed for should be granted as the Court is not required to make a final determination at this stage.

(B) The Defendant’s case is that it has through the Department of Roads commenced the process of opening up the road that serves hundreds of residents of Tapsagoi Settlement Scheme. That the road is 15 metres wide and has a length of 5 km. That the exercise was commenced after completing the survey exercise through which the size and beacons of the road were determined. That the Plaintiffs’ resistance to the works will lead to the Defendant losing money due to the stopped works, and the people in the area will lose out on the service the road would have brought to them. That as the Plaintiffs have not challenged the survey exercise, and have not undertaken to offer security for the losses that the Defendant is likely to suffer, then the injunction should not be granted as they have failed to satisfy the threshold for granting the injunction order set out in the ***Giella Vs Cassman Brown*** case.

5. The following are the issues for the Court's determinations;

(a) Whether the Plaintiffs have established a prima facie case for temporary injunction order to issue as this interlocutory stage.

(b) Who pays the costs of the application?

6. The Court has carefully considered the grounds on the Motion, the affidavit evidence, the written submissions by both Counsel, and come to the following determinations;

(a) That the Plaintiffs have through the attached copy of the title deed, and sale agreements established the basis of their proprietary interests over the portions of the lands described therein being Uasin Gishu/Tapsagoi Settlement Scheme/258, 701, 906 and 910. The Plaintiffs claim or allege that the Defendant has forcefully and illegally gained entry onto the said portions of the lands, and started road construction thereon, and hence this application. That the Defendant's response is that the road construction is on the road which they are opening up after the survey exercise that marked the extent of this road through placement of beacons.

(b) That neither the Plaintiffs nor the Defendant has availed the survey's report to confirm whether the Plaintiffs' lands were found to have extended onto the road reserve after the survey exercise during which the road beacons were erected, or whether the road existed on the ground before the survey exercise. That due to the nature of the application, and the ongoing Covid-19 Pandemic, and so as to fast-track the determination of the position of the road in dispute, the Court is of the view that there is need for the County Land Registrar and Surveyor to be involved at this stage to confirm the ground position of the said road in relation to the Plaintiffs' lands. That it is only after the County Land Registrar and Surveyor's Report has been filed that the Court will determine whether or not to issue the order of injunction.

(c) That despite the provision of **Section 27 of Civil Procedure Rules Chapter 21 of Laws of Kenya**, the Court finds the costs of the application be costs in the cause in view of the finding in (b) above.

7. That in view of the finding above, the Court orders as follows;

(a) That so as to urgently determine the ground position of the road in dispute, the Court directs that the County Land Registrar and Surveyor do visit the suit lands and the road, and after hearing both sides confirm the following;

(i) Whether the public road exists officially on both the ground and relevant maps.

(ii) That if the answer to (i) above is in the affirmative, whether the road as marked on the ground has encroached onto the suit lands, or any of the suit lands, and by what acreage and,

(iii) Whether the suit lands or any of the suit lands has encroached onto the public road and by what acreage.

(b) That the Plaintiffs and the Defendant be at liberty to engage a private licensed surveyor to watch over the said exercise.

(c) That the Plaintiffs and Defendant equally meet the County Land Registrar's and Surveyor's fees. That the fees paid to be treated as costs and awarded to the successful party.

(d) That due to the public interest in this matter, the County Land Registrar and Surveyor to file their report electronically with the Court in thirty (30) days from the date their fees are paid.

(e) The costs of this application be in the cause.

Orders accordingly.

Delivered and signed at Eldoret this 27th day of May, 2020

S. M. KIBUNJA

JUDGE

Ruling read in the absence of all Parties/Counsel and is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.

Court Assistant: Christine