



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO.79 OF 2018

ALEXANDER HOOPS

AMOS MUGAMBI

PATROBAS AWINO (*Suing as themselves and as representatives of*

SOWESA VA SELP GROUP.....**PLAINTIFF**

=VERSUS=

NATIONAL POLICE SERVICE.....**1ST DEFENDANT**

OCPD BURUBURU POLICE STATION.....**2ND DEFENDANT**

ATTORNEY GENERAL.....**3RD DEFENDANT**

INSPECTOR GENERAL OF POLICE.....**4TH DEFENDANT**

RULING

1. The Plaintiff/Applicants are officials of Sowesava Self-Help. The applicants filed a Notice of Motion dated 21st February 2018, in which they sought the following orders:-

a. Spent

b. Spent

c. That a Temporary Injunction do issue against the OCPD Buruburu Police Division and OCS Buruburu Police Station and/or National Police Service, their employees, agents or whomsoever acting on their behalf restraining them from interfering with/trespassing, encroaching onto or in any other way dealing with the suit property against the applicants peaceful and quiet possession of the property being Nairobi Block 82/7333 pending hearing and determination of this suit.

d. Spent

e. That the applicants be allowed uninterrupted access to their homes and properties known as Nairobi Block 82/7333 situated in Nairobi City County, pending the hearing and determination of this suit.

f. Spent

g. That the Respondents and/or their servants/ agents/ representatives herein be restrained from alienating /trespassing and/ or otherwise interfering in any way with the said property known as Nairobi Block 82/7333 pending the hearing and determination of this suit.

h. That the orders of this Court be enforced by the County Commander Nairobi City County.

i. The costs of and occasioned by this Application be provided for.

2. The applicants contend that they were allocated **LR No. Nairobi Block 82/7333** (Suit property) in 1998 and that they have been in possession since then for a period of over 19 years and further that they know of no other person who have claimed title to the suit property or challenged their ownership in court. They contend that the police have been harassing them by arresting their members and preventing them from accessing their homes on the suit property without telling them on whose behalf they are doing that.
3. The applicants argue that over the years, there have been attempts to grab the suit property by police officers and some shadowy figures. The applicants have made complaints to various entities like the County Government of Nairobi, the National Police Service, and the National Land Commission. The applicants argue that the suit property was surrendered by the city council to the Government specifically for allocation to squatters but other people are out to grab the same. They further state that the National Land Commission held a public hearing on the acquisition of the suit property by a private entity and found that the acquisition was unlawful in its determination of 14th November 2016.
4. The respondents opposed the applicants' application based on a replying affidavit sworn by Sergeant Wilson Tenai on the 7th April 2018 and a supplementary affidavit sworn by the same officer on 25th May 2018. The respondents contends that the applicants application is an abuse of the process of the court. The suit property is not in existence the same having been subdivided by its owner into several parcels. The respondents further argue that there was a Judicial Review application which was filed by the owner of the sub-divisions which resulted from the suit property. The applicant in the said application was granted leave to commence judicial review proceedings. The leave granted was to operate as stay and the officer commanding police division (OCPD) Buruburu was asked to enforce the order by preventing any encroachment of the suit properties which were as a result of the subdivision of the suit property. The respondents therefore contend that they are performing their duty as mandated and have no interest in the property.
5. The respondents further state that the applicants are seeking the orders from the court and in case the orders are granted, they will use the same to invade the suit property. The respondents also state that the applicants know the owner of the property which has since been subdivided but they have not sued it. The respondent also state that the applicants attempted to subdivide the land in issue using forged documents but the process was reversed upon discovery that it was fraudulent. The survey department as well as the Ministry of Lands have since disowned the documents held by the applicants.
6. I have carefully gone through the applicants' application as well as the supporting documents. I have also gone through the opposition by the respondents as well as submissions by the applicants and the respondents. The only issue for determination is whether the court can grant the injunction sought and allow the applicants into the land in issue as they want.
7. This is a case with an interesting but disturbing history. The suit property was owned by a company called Gidjoy Investment Limited (the company). The company acquired the suit property from continental Developers Limited. The company had title to the suit property which was later closed on subdivision and it resulted into new titles known as LR Nos Nairobi Block 82/7813-7855.
8. The applicants claim that they were allotted the same property in 1998. The alleged allotment and subsequent certificate of lease have been disowned by the Ministry of Lands. The applicants tried to subdivide the property but that scheme was discovered and everything was cancelled. The applicants then lodged a complaint with the Nairobi City County who forwarded the complaint to the National Land Commission which started the process of review of the grants. The process was published in the newspapers in 2016. The affected parties including the company attended the hearings. The applicants contend that a determination was made by the National Land Commission on 14th November 2016. This is according to the Chairman of the National Land Commission.
9. What I find interesting and curious is that the vice chair of the National Land Commission has written letters to the respondents confirming that there has been no determination yet because the commission had a lot of such reviews from all over the country such that they could not determine on the one touching on the suit property.
10. The National Land Commission is the second interested party in this case. There was no appearance for the commission but there is a replying affidavit by the Chairman of the Commission sworn on 13th June 2018 which supports the application by the applicants and goes further to state that there was indeed a determination made on 14th November 2016.
11. There is also an affidavit sworn by Antipas Nyanjwa on 18th April 2018. Antipas Nyanjwa is a Deputy Director, Investigating and Forensic Services at the Commission. He has disowned the documents annexed to the affidavit of the sergeant Wilson Tenai . He calls the documents a forgery. The documents were alleged to have come from him. He has even disowned documents from the Commission.
12. What has however not been contradicted are documents from the Ministry of Lands and the department of survey which indicate that the ownership documents held by the applicants were forgeries and that there were attempts to illegally subdivide land which did not belong to the applicants.
13. Be that as it may, the principles for grant of injunctions are well settled. First and foremost, an applicant has to demonstrate that he has a prima facie case with probability of success. The applicants are seeking to prevent the respondents from preventing them from accessing the property in dispute. The respondents have indicated that they have no interest in the property in issue. Their only concern is protection of private property. They have been ordered to ensure that there is no encroachment on the property. They are doing exactly that. Some of the officials of the Self Help Group were arrested and were due to be charged with malicious damage to property. There is affidavit evidence that the applicants went to the suit property and destroyed the fence. That is why they were arrested. This evidence has not been controverted.
14. From the documents availed before me, I do not see any right of the applicants which has been violated as regards the property in issue as to call for intervention by way of injunction . The police are performing their mandate by protecting private property. There is an order from Judicial Review No.20 of 2018 which is specifically directing police officers to ensure that there is no encroachment. Though the applicants in their submissions are claiming that there is no ownership dispute, it is clear that title to the property in issue is held by the company. Even though there were proceedings regarding the propriety of the title in question, there is no determination which has been

gazetted as required. The applicants cannot therefore say that there is no dispute on ownership.

15. The applicants have not sued the company which is owner of the properties as per the titles annexed to the replying affidavit by the respondent. The documents of ownership by the applicants have been disowned. The applicants have not challenged the position by the Ministry of lands. The applicants seem to be banking their hopes on the review of grant which has not been communicated officially and the titles in existence revoked. I therefore do not see what prima facie case the applicants have to warrant issuance of injunction or for an order that they be let to access their properties.

16. There are photographs which are annexed to the affidavit of Sergeant Wilson Tenai. They show that the property in issue is vacant. There are no buildings and it is therefore clear that the applicants are not being honest which they claim that they have put up houses on the suit properties which they want access to. *Patrobas Owino* who is one of the applicants is a defendant in ELC 568 of 2015 **Tinga Traders Ltd Vs Patrobas Owino**. In this case, the issue of the allotment held by the applicants herein featured and in a ruling by justice Okongo delivered on 29th January 2016, the Judge had serious doubts on the authenticity of the allotment. The defendant in that case was restrained from interfering with the plaintiff's properties.

17. The first interested parties filed grounds of opposition in which it opposed the applicants' application but in its submissions, it supported the applicant's case and supported the position taken by the second interested party. This is breathing both cold and hot which is not allowed. It is clear that the applicants' application lacks merit. It is clearly an abuse of the process of Court. I proceed to dismiss the same with costs to the respondents.

It is so ordered.

Dated, signed and delivered at *Nairobi* on this *1st* day of *November 2018*.

E.OBAGA

JUDGE

In the presence of :

M/s Njuguna for 2nd interested party

M/s Chika for Mr Gilbert for Plaintiff

Hilda : Court Assistant

E.OBAGA

JUDGE