



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
ENVIRONMENT AND LAND SUIT NO 24 OF 2015

ABDI AZIZ SULEIMAN1ST PLAINTIFF

BISHAR SULEIMAN2ND PLAINTIFF

VERSUS

NYARA YOUTH GROUP (sued through its management

officials chairman, Secretary and treasurer.....DEFENDANT

R U L I N G

1. This application is dated 15th April, 2015. The applicant says that the application is brought under Sections 1, 1A, 3, 3A of the Civil Procedure Act, Order 40 Rules 1 and 2 of the Civil Procedure Rules and all the enabling provisions of the law. The application prays for orders:-

1. ***THAT this application be certified urgent and the same be heard ex- parte in the first instance.***

2. ***THAT this Honourable Court be pleased to issue an order of temporary injunction restraining the Defendants, their workers, agents, servants, contractors or anybody else acting at his behest from entering, remaining on, building, cultivating and/or otherwise howsoever interfering with the plaintiff's quiet possession, user and enjoyment of land parcels No. LIGHT INDUSTRIAL PLOT BLOCK 5/11 ISIOLO until this application is heard and determined.***

3. ***THAT this Honourable Court be pleased to issue an order of temporary injunction restraining the defendants, their workers, agents, servants, contractors or anybody else acting at his behest from entering, remaining on, building, cultivating and/or otherwise howsoever interfering with the plaintiffs quiet possession, user and enjoyment of land Parcels No. LIGHT INDUSTRIAL PLOT BLOCK 5/11 ISIOLO until this suit is heard and determined.***

4. ***THAT the costs of this application be provided for.***

2. The application is supported by the affidavit of ABDI AZIZ SULEIMAN, the 1st plaintiff and has the following grounds:-

i. ***THAT the plaintiffs are the registered proprietors of Land No. LIGHT INDUSTRIAL PLOT BLOCK 5/11 ISIOLO.***

- ii. ***THAT*** on 12th April, 2015 the Defendants comprised of a group of about 30 young men unlawfully entered into the Plot and started putting up structures thereon and thereafter started destroying the plaintiff's property.
- iii. ***THAT*** despite various approaches and demand letter by the plaintiffs to the Defendants requiring them to stop the said acts the Defendants have ignored.
- iv. ***THAT*** the plaintiffs are suffering immense loss and damage as they continue to witness the said destruction of their developments while they cannot use the said land.
- v. ***THAT*** the defendants have threatened to use violence if the plaintiffs ever steps on the said land.
- vi. ***THAT*** unless this Honourable Court intervenes urgently the Defendants will proceed with the said destruction hence cause irreparable loss to the plaintiffs.
- vii. ***THAT*** the Defendants will not suffer any prejudice and it is in the interest of justice and fairness that this application be allowed.

3. Ex parte orders in terms of prayers 1 and 2 were granted on 16th April, 2015.

4. The plaintiffs have submitted that they demonstrated a *prima facie* case as they are the registered owners of Land Parcel Light Industrial Block 5/11 as is confirmed by both the defunct County Council of Isiolo, the County Government of Isiolo and the National Land Commission. They submit that the documents tendered by the defendant are forgeries as confirmed by the 3 bodies.

5. The plaintiffs have submitted that if the injunctive orders are not granted, they will suffer irreparable loss as the defendants wanted to put permanent structures on their land. They also aver that the defendants had purposefully caused damages to their property and if Injunctive Orders are not issued, the defendant would continue to cause further damages, thus occasioning irreparable loss. The plaintiff's submit that they have achieved the threshold required for grant of Injunctive Orders as enunciated by the case of ***Giella Versus Cassman Brown & Co. Adv. (1973)***.

6. The Defendants have submitted that they are the registered owners of the Suitland, and had tendered a bundle of documents as proof of ownership of the disputed plot. They submit that for this reason, the Plaintiff cannot be said to have demonstrated a *prima facie* case.

7. The defendants claim that they have been on the suitland for many year and that they have done a number of developments on the land. They also claim that the plaintiffs had never occupied the suitland and wanted to use the Court process to access the suitland.

8. The defendants claim that the plaintiffs stand to suffer no loss as it is in occupation of the loss. For this reason they also submit that the balance of convenience tilts in its favour.

9. I need not reinvent the wheel. The Court of Appeal in the case of Mbuthia Versus Jimba Credit Corporation [1988] KLR 1 eruditely gave veritably germane guidance regarding how a Court should move when considering prayers for interlocutory Injunctive orders. The Court opined as follows:-

“The correct approach in dealing with an application for an interlocutory injunction is not to decide the issue of fact, but rather to weigh up the relevant strength of each side's propositions. The lower court judge had gone beyond his proper duties and made final findings of fact on disputed affidavits.”

10. At this interlocutory stage, I will not seek to determine disputed facts. I, however, note that the defunct County Council of Isiolo, the County Government of Isiolo and the National Land Commission have all disowned the documents the defendant tenders as proof that it owns the

disputed plot. I also note that in its Submissions, the defendant has not attempted to controvert the assertion by the County Government of Isiolo that the documents they have proffered as proof of ownership of the plot are forgeries. The County Government of Isiolo has also laconically stated that “ there is no record whatsoever regarding the said Nyara Youth Group in our custody.”

11. The defunct County Council of Isiolo in a letter dated 20th July, 2012 addressed to the Commissioner of lands unequivocally confirmed that the disputed plot belonged to ABDIAZIZ SULEIMAN and BISHAR SULEIMAN.

12. The National Land Commission in a letter dated 22nd May , 2015 and addressed to the County Chief Officer, Land Physical Planning and Urban Development, Isiolo County categorically denied the authenticity of the defendant's documents and laconically termed them “a forgery”. The writer also unequivocally stated that his signature had been forged.

13. After carefully weighing up the propositions proffered by the parties, I am inclined to find that the plaintiffs' propositions carry more weight. I therefore, find the plaintiffs' application meritorious.

14. In the Circumstances, **this application is allowed. Prayer 3 is granted.**

15. **I award costs to the plaintiffs**

16. **It is so ordered .**

Delivered in open Court at Meru this 5th day of November, 2015 in the presence of:-

Cc. Daniel/Lilian

Parties Not in Court

P. M. NJOROGE

JUDGE