



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CONSTITUTIONAL PETITION NO. 10 OF 2013

IN THE MATTER OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF ENFORCEMENT OF THE BILL OF RIGHTS

AND

**IN THE MATTER OF PROTECTION OF RIGHT TO PROPERTY UNDER ARTILCE 40 OF
THE CONSTITUTION OF KENYA 2010**

AND

IN THE MATTER OF PLOT NO. 229 BLOCK 7, NAROK TOWNSHIP

ZACHARIA NJENGA KAMITI..... PETITIONER/APPLICANT

VERSUS

THE COUNTY GOVERNMENT OF NAROK 1ST RESPONDENT

THE COUNTY EXECUTIVE OFFICER, IN -CHARGE

OF LANDS, PHYSICAL PLANNING &

URBAN DEVELOPMENT, NAROK COUNTY 2ND RESPONDENT

THE COUNTY COMMISSIONER, NAROK COUNTY..... 3RD RESPONDENT

THE SECRETARY, NAROK COUNTY 4TH RESPONDENT

RULING

1. On filing a petition on the 26th March 2013, the Petitioner, **Zacharia Njenga Kamiti**, filed an application under Certificate of Urgency on the same date by way of Notice of Motion. The application which was subsequently amended on the 13th January, 2014 is the subject of this ruling .
2. The Notice of Motion was brought under Article 22 (1) & (3), Article 23 (3) and Article 40 of the Constitution of Kenya, 2010, Section 1A, 1B, 3 & 3A of the Civil Procedure Act, Order 50 of the

Civil Procedure Rules . The prayers are as follows:

(1) spent

(2) That first, pending the hearing and determination of this application, and later pending the hearing and determination of this suit, the court be pleased to issue an order of temporary injunction and/or prohibitory order, restraining and prohibiting all the Respondents herein jointly and severally, by themselves, their agents, servants, representatives, successors, assigns, or any one claiming through or under them from entering, remaining on, demolishing the construction/building, evicting the Petitioner, preventing, inhibiting, stopping or otherwise interfering with the Petitioner's occupation, use, construction and/ or development of the suit premises being all that parcel of land known as Plot Number 299 Block 7 (Stadium Ward) situate within Narok Township.

(3) Costs of this application.

3. The application is premised on the grounds on the face of the Amended Notice of Motion and supported by two affidavits sworn on 25th March, and 13th January 2014 by the Applicant. It was deponed in the said affidavits that the Applicant is the lawful owner of the suit property having purchased and transferred the property from the previous allottee with the approval and consent of the Narok Town Council; That upon taking possession of the suit land, the applicant presented building plans for approval by the County Council which were duly approved; that the applicant has put up a multi-storey building which the council now seeks to stop construction and demolish the existing structures for want of valid building plans. The applicant contend that the acts and threats of the defendants curtails his constitutional right to ownership and enjoyment of private property. He further avers that he will suffer great loss if the defendants proceed to demolish the building.
4. Despite service of the application to the defendants, they did not file any response. **Mr. Kirui**, learned counsel for the 3rd defendant intimated to court that he does not oppose the application.
5. I have considered the application and the oral submissions made in support of the application by **Mrs. Magana**, learned counsel for the Applicant.
6. The Applicant under prayer 2 seeks interlocutory injunctive orders pending the hearing and determination of the suit. The consideration to be taken by the court in an application for interlocutory orders were clearly explained in **Giella vs Cassman Brown Limited (1973) EA 358**. Firstly, an applicant has to show a prima facie case with probability of success. Secondly, an injunction will not normally be granted unless the applicant with otherwise suffer irreparable loss that cannot be compensated adequately by way of damages. Thirdly, if the court is in doubt, it will determine the application on a balance of convenience.
7. So does the Applicant have a prima facie case? The applicant has annexed a copy of the agreement as evidence that he is the legal owner of the suit property. Further, he has exhibited that the defendant approved the transfer and subsequent building plans for the suit property; The county government therefore was in the loop from the onset of the transaction and approved the transfer and subsequent building plans. With these facts not having been challenged by the defendants and by the evidence placed before me at this stage, I am of the view that a prima facie with a probability of success has been established.
8. Will the Applicant suffer irreparable loss if an injunction is not granted? This is a case involving land. The Applicant claims to have purchased and transferred the land with the consent and approval of the defendants. This claim has not been denied or challenged by the defendants. In my view, if the injunction is not granted, the applicant's property may be demolished and he will suffer irreparable loss.
9. Having found that the Applicant has satisfied the above two primary requirements for grant of injunctive orders, the application for those orders will succeed. The balance of convenience also lies in favour of the Applicant as it is not disputed that he is in occupation of the suit land. I hereby do grant the interlocutory injunction as prayed.

Dated, signed and delivered on this 14th day of February 2014.

L N WAITHAKA

JUDGE.

PRESENT

Ms Said holding brief for Mrs Magana for plaintiff/Respondent.

N/A for the respondents

L N WAITHAKA

JUDGE