



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENTAL AND LAND DIVISION
ELC CIVIL MISC. NO. 266 OF 2014

NGAMAU MUNGAI MUIGAI.....1ST PLAINTIFF

NGAMAU LIMITED2ND PLAINTIFF

VERSUS

DAVID NJENGA.....1ST DEFENDANT

NJOROGE KIMANI2ND DEFENDANT

RULING

The plaintiffs by a Notice of Motion dated 10th March 2014 seek the following substantive order:-

That the Defendants/Respondents be and are hereby restrained by way of a temporary injunction by themselves, their servants, agents, assigns or any other person acting on their behalf from trespassing on the plaintiffs suit land namely **L.R. NO. 18314** and **L.R. NO.18316** or in any other manner dealing with the said land until this suit is heard and determined.

The application is premised on the grounds that the plaintiffs are the registered owners of the 2 suit properties and that the plaintiffs have built on the 2 parcels of land a slaughter house known as Kayole slaughter house. The plaintiffs state that the Defendants on or about 1/2/2014 trespassed onto the suit land at night and constructed small semi-permanent structures made of iron sheets without any notice to and/or authority of the plaintiffs.

The plaintiffs reported the matter of the trespass at Kayole police station on 7/2/2014 vide O.B. NO. 18/7/2/2014 and with the assistance of the police brought down the structures. The Defendants once again on 12/2/2014 at night trespassed onto the suit property and erected one stone/permanent kiosk which the plaintiffs only discovered in the morning and made a further report at Kayole police station vide O.B. NO. 28/12/2/2014. That the Defendants were summoned at the police station to produce any ownership documents but they failed to avail any documents inspite of promising to do so.

The plaintiffs have further filed a supporting affidavit sworn by the 1st plaintiff who is also a director of the 2nd plaintiff company. The plaintiffs have annexed copies of leases in respect of the 2 parcels of land

marked “NMM1” and “NMM2” to illustrate the fact that they are the registered owners of the suit properties. Through the supporting affidavit the plaintiffs have verified the grounds set out on the body of the application in support of the application.

The plaintiffs application was certified urgent on 10/3/2014 and directed to be served on the Defendants for interpartes hearing on 24/3/2014. On the 24/3/2014 the application was listed before me for hearing and even though the application had been served on the Defendants as per the affidavit of service dated 20/3/2014 and filed in court on 21/3/2014 I opted to adjourn the hearing of the application to 10th June 2014 to afford the Defendants an opportunity to appear and be heard just in case they had been prevented by any reasonable cause from appearing. The Defendants were served with a mention notice for 10th June 2014 in place of a hearing notice as per the affidavit of service dated 5th May 2014.

On the 10th June 2014 the Defendants did not appear and neither had they filed any response to the plaintiffs application for injunction meaning that the plaintiffs application was unopposed. The court has reviewed the plaintiffs application and is satisfied that the plaintiffs are the registered owners of the suit properties having regard to the exhibited certificates of lease. Thus the plaintiffs by reason of being the registered owners would have a prima facie case with a probability of success as against the Defendants.

In the absence of any response from the Defendants, the plaintiffs assertions are uncontraverted and accordingly the court holds that the plaintiffs have demonstrated they have a prima facie case with a probability of success. The court in the premises grants an order of temporary injunction in favour of the plaintiffs as against the Defendants in terms of prayer (3) of the Notice of Motion and further directs that the costs of the application be in the cause.

Ruling dated signed and delivered this.....17th.....day of...July.....2014.

J.M. MUTUNGI

JUDGE

In the presence of:

.....For the Plaintiffs

.....For the Defendants