

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

ELC NO. 111 OF 2020

TAITA HILLS & SALT LICK WILDLIFE RESORT LIMITEDPLAINTIFF

VERSUS

JOSEPHAT MVOI MWANGOMBE & 8 OTHERS DEFENDANTS

RULING

(Application for injunction; plaintiff claiming that defendants have invaded its land and are causing destruction; no reply to the application; application allowed)

1. This suit was commenced through a plaint which was filed on 1 September 2020. The plaintiff operates a game sanctuary within the land parcel LR No. 13007 commonly known as Taita Hills and Salt Lick Wildlife Sanctuary. The plaintiff avers that the defendants occupy properties adjacent to the sanctuary. It is the case of the plaintiff that the defendants, on 25 June 2020, forcibly entered the plaintiff's sanctuary, proceeded to drive and position heavy machinery in it, and started digging massive trenches and pits, and destroying the delicate vegetation therein. In the suit, the plaintiff wishes inter alia to have the defendants permanently restrained from the sanctuary.
2. Together with the plaint, the plaintiff filed an application seeking to have the defendants restrained from the suit property by an order of an injunction pending the hearing and determination of this case. The application was served upon the defendants but the defendants did not respond to it and indeed they have not even entered appearance in this suit.
3. I have gone through the application and the supporting affidavit of Abdulaziz Abdalla. He has annexed title to the suit property. He has also annexed photographs showing the activities of the defendants. These are not controverted. I therefore have no reason not to believe that the defendants have unlawfully entered the plaintiff's land and are causing destruction to it. In essence the plaintiff has demonstrated a prima facie case. If an injunction is not issued, it is clear to me that the sanctuary may be permanently destroyed which will cause, not only to the plaintiff, but also the environment, irreparable loss.
4. I therefore allow the application for injunction. Thus, pending the hearing and determination of this suit, the defendants are hereby restrained from entering, digging, extracting, excavating soil and stone material, clearing vegetation, or in any other manner whatsoever, interfere with the property LR No. 13007 commonly known as Taita Hills and Salt Lick Wildlife Sanctuary. The plaintiff will also have the costs of this application.
5. Orders accordingly.

DATED AND DELIVERED THIS 12 DAY OF OCTOBER 2020

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA