



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ENVIRONMENTAL & LAND CASE 134 OF 2011

David Njoroge Ng'ang'a & 58 Others.....Plaintiffs/Applicants

Versus

Julius Mwathe Munuve & 3 Others.....Defendants/Respondents

RULING

The Plaintiffs/Applicants filed on 30/3/2011 a Notice of Motion application dated 28/3/2011, accompanied by a Supporting Affidavit sworn by Loice Wariga on the same date. Subsequently the Plaintiffs/Applicants filed a Notice of Withdrawal of Application dated 28/10/2011, seeking to withdraw the Notice of Motion application dated 28/3/2011, but retain the Supporting Affidavit thereto. The said application was withdrawn.

On 4/5/2012 the Plaintiffs/Applicants filed a Notice of Motion, dated and filed on the same date. This Notice of Motion was supported by a Supporting Affidavit of Loice Wariga and annexures thereto, all dated 4/5//2012. The Plaintiffs/Applicants sought injunctive orders that, pending the hearing and determination of the application dated 26/10/11, an order of injunction do issue restraining the Defendants whether acting by themselves through their Agents, Servants or anybody claiming any right or interest through them from taking over the Plaintiffs' Plot Nos. 5, 6, 7, 15, 16, C16, 22, 28, 29, 30, 37, 60,62,91,111,,116,121,137,150,156,163,156,170,171,176,178,183,795,196,197,199,217,221,222,325,243, 274,283,295,297,300,306,307,324,339,342,343,345,346,353,360,364,367,368,372 forming the Plaintiffs' plots of Land known as Manna Jua Kali Resettlement Scheme in Kayole Nairobi, and from evicting the Plaintiffs from the occupation of the stated Plots from demolishing their houses thereon. The Plaintiffs/Applicants further sought that the OCPD Kayole Police Division, the OCS Kayole Police Station, the District Officer Njiru Division and the Chief in Charge Kayole North Location be ordered to enforce and ensure compliance with the Court's Orders. Lastly, costs be in the cause.

The application was premised on the following grounds:

1. In flagrant abuse of process as this application continues pending in Court for determination, the Defendants and their agents continue to forcefully evict and take over the Plaintiffs' Plots in order to render this Court's process nugatory.
2. Unless the Interim Orders as sought herein are granted, by the time the application is concluded, the Plaintiffs' plots will have been taken over completely and there will be nothing to protect.
3. It is important and just to preserve the status of the subject dispute pending the conclusion of the proceedings herein.

To determine this application, I find it necessary to detail the applicant's supporting affidavit.

In the Supporting Affidavit, Losie Wariga deponed that she was the Chairlady of Manna Self Help Group who were the lawful allottees to the Plots the subject of this suit. That as the matter was pending in Court the Defendants continue to forcefully remove their members from their plots by demolishing their houses and building other structures on their plots. That their attempts to get the intervention of the Provincial Administration have failed to stop them, as it is always argued that since the case is in Court the Plaintiffs should obtain a Court Order for them to move in and act. The deponent swore that in the circumstances, it is only fair and just that the orders herein be granted, pending the hearing and determination of the suit, and further that unless the orders are granted this whole case will be rendered nugatory.

In the Supporting Affidavit dated 28/3/2011 (in support of the Notice of Motion application dated 28/3/2011) the deponent (Loise Warigi) deponed that she is the Chairlady of Manna Jua Kali Self Help Group and the 36th Plaintiff/Applicant, and that she has been duly authorized to swear this affidavit by her co-Plaintiffs/Applicants. That Manna Jua Kali Self Help Group was first registered in 1996 with the aim of assisting marginalized groups living in Kayole to put up community based projects. That the group was registered by Kenya National Federation of Jua Kali Association, as Manna Jua Kali Association in the year 2000. The deponent annexed a Certificate of Membership, Membership No. MNN.030 2000, issued on 11/1/2000, marked as LW1.

That in the year 2006, Manna Jua Kali Resettlement Scheme was registered under the Ministry of Gender, Sports, Culture and Social Services and the name was changed to Manna Self Help Group. The deponent states that she conducted a search at Nyayo House, which revealed that there were two (2) groups registered under the same name of Manna Jua Kali Self Help Group.

She further depones that in the year 1997, the Group applied to the City Council of Nairobi to be allocated a piece of land situated in Kayole in the name of Manna Resettlement Scheme. That in the same year, the application to the City Council of Nairobi was approved, and individual letters of allotment dated 5/8/1997 was issued, and every member allocated a plot in the name of Manna Jua Kali Resettlement Scheme. That in the same year, she wrote to the Managing Director Kenya Power and Lighting Company to recommend the transmission of power lined and way leaves. That on 23/10/2007 the Principal Way Leave Officer recommended to the group the required measurements between the transmission power lines and way leaves and that on 27/11/2007 the Principal Way leaves Officer approved the subdivision of the scheme. The deponent annexed the Plan and approval by Kenya Power and Lightening Company marked LW4 and LW5 respectively.

The deponent further stated that the members, both resident and non-resident in the plots have been paying rates to the City Council of Nairobi, and further that they receive reminders from City Council of Nairobi. She annexed copies of receipt for payment of rates and letter of reminder from City Council of Nairobi to pay rates marked LW6 and LW7 respectively. Further that she has called for meetings to discuss various issues affecting the members of the Group, including development of the Plots and payments of rates. Attached and marked LW8 is a copy of minutes of a meeting held on 13/9/2008.

She depones that the 4th Defendant/Respondent is the area councilor and one of the councilors of the City Council of Nairobi. That he wrote a letter dated 22/12/2009 to the Director of Housing Development City Council of Nairobi claiming that there were fake documents that were being circulated in the Group. Annexed and marked LW9 is a copy of the letter. She further depones that the 4th Defendant/Respondent directed the Town Clerk to issue an enforcement letter seeking their eviction claiming that they illegally constructed residential and commercial premises. She further depones that the 1st, 2nd, 3rd, and 4th Defendants have been issuing parallel Share Certificates to members who are not genuine members of the Group, and that the latter members forcefully evicted, demolished and at times acquired plots from genuine plot owners – members of the group. Annexed and marked LW9A and LW10 are copies of the Share Certificate and Enforcement Letter, respectively.

She depones that the Group wrote to the Town Clerk City Council of Nairobi who requested them to supply him with various documents to authenticate their claim as genuine plot owners. In response

thereto, they were notified to issue a notice to all members to register again, to enable the City Council of Nairobi to update their records in-line with the letters of allotment issued on 5/8/1997.

The deponent states that she wrote a complaint letter to CID Nairobi dated 9/9/2010, complaining about the grabbing of Groups plots by members of a parallel group calling itself Manna Self Help Group. That they Group also wrote to the Minister of Local Government detailing their grievances as genuine allottees and plot owners of Manna Self Help Group. That in response to their letter, the Permanent Secretary in the Ministry of Local Government wrote to the town clerk seeking to clarify the issues raised on the letter of 9/9/2010. She depones that since then, they have not received a response from the Town Clerk of the City Council of Nairobi. Further that there has been no formal notification that their letters of allotment have been revoked by the City Council of Nairobi.

The deponent swears that unless the 1st, 2nd, 3rd, and 4th Defendants are restrained permanently from allocating their plots to the members of the parallel group, the Plaintiff/Applicants stand to suffer irreparable loss and damage.

The Defendants/Respondents did not file a Replying Affidavit in response to this application, though having been duly served. At the hearing of the application, counsel for the Plaintiffs/Applicants stated they sought prayers 2, 3 and 4 of the Notice of Motion dated 26/10/11, and that they rely on the grounds of the face of the application, and the affidavits and annexures thereto. He further stated that he adopts the written submissions filed on 14/12/2011. He stated that the applications, affidavits and submissions on record are elaborate, and that they reveal that there is a clear infringement of Plaintiffs/Applicants' rights in so far as the use and possession of the land possession is concerned. He further stated that the Plaintiffs/Applicants have exhibited allotment documents entitling them to the possession of, and occupation of the subject parcel of land. He stated further that the Plaintiffs/Applicants have demonstrated that the Defendants/Respondents, directly or through their proxies are actively engaging on acts meant to dispossess them of the subject land. Counsel contended that the Plaintiffs/Applicants have demonstrated a prima facie case to be determined at a full hearing.

Counsel further argued that the Plaintiffs/Applicants have shown that they have expanded in the acquisition of the parcels and they are staying on them with their families. That they have merger resources and are therefore crying to Court to restrain the Defendants/Respondents actions, failing which they will be exposed to irreparable damages. Lastly, Counsel argued that the Plaintiffs/Respondents have demonstrated that they are in occupation of, and have developed the parcels of land, and that the Defendants/Respondents are the intruders and want to evict the Plaintiffs/Applicants using force using their strength of financial resources to mobilize and harm the weak. Counsel submitted that the balance of convenience tilts in favour of the Plaintiffs/Applicants.

Counsel then pointed out that service of the applications and affidavits were served upon the Defendants/Respondents who neither themselves nor their advocates have filed any documents in response. In that regard, the facts as presented by the Plaintiffs/Applicants remain unchallenged, and that they should be taken to be true.

Counsel for the Defendants/Respondents was present in court, but he did not respond to the arguments presented by counsel for the Plaintiffs/Applicants, for he had no instructions to do so.

I have considered the facts as deponed by the Applicants and they have not been challenged. They are in possession and allotment letters that have been attached as exhibits demonstrates this. On that alone they have demonstrated that they have a *prima facie* case with a probability of success in line with the principles of the case of *Giella – Vs – Cassman Brown E.A 1973*. It is evident that they shall suffer irreparable loss as they state that they are persons of merger resources. The balance of convenience tilts in their favour as the Respondents have opted not to contravene the facts as deponed by the Applicants.

I therefore grant prayer 2, that an order of injunction does issue restraining the Defendants whether acting by themselves or through their agents, servants or anybody claiming any right or interest through them taking over the Plaintiffs Plot Nos. Nos. 5, 6, 7, 15, 16, C16, 22, 28, 29, 30, 37, 60, 62, 91,

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forming the Plaintiffs Plots of Land known as Manna Jua Kali Resettlement Scheme in Kayole Nairobi
and from evicting the Plaintiffs from the occupation of the stated Plots and from demolishing their houses
thereon until the hearing and determination of this suit. I also grant prayers 3 and 4 of the application
dated 26/10/2011.

Orders accordingly.

Dated, signed and delivered this **13th** day of **July** 2012

R. OUGO
JUDGE

In the Presence of:-

..... For the Applicants

..... For the Respondents

Kabiru

Court Clerk