



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC NUMBER 514 OF 2018

MOSIARA TRADING COMPANY LIMITED.....APPLICANT

VERSUS

THE ATTORNEY GENERAL.....1ST RESPONDENT

CABINET SECRETARY MINISTRY OF LANDS

& PHYSICAL PLANNING.....2ND RESPONDENT

THE NAIROBI CITY COUNTY.....3RD RESPONDENT

NATIONAL CITY COUNTY.....4TH RESPONDENT

WATER RESOURCE MANAGEMENT AUTHORITY....5TH RESPONDENT

RULING

1. This is a Ruling in respect of a notice of motion dated 12th May 2020 in which the Plaintiff/Applicant seeks an injunction against the Respondents in the following terms:

“ That pending the hearing and determination of this hearing , the Respondents , their servants, proxies and or any other person acting through them be restrained by an order of injunction from interfering , working , developing ,erecting structures , planting or ploughing the property known as LR No.209/12227”.

2. The Applicant is the registered owner of LR No.209/12227 (suit property). The Applicant had put up a building on the suit property which has since been demolished on grounds that it was on riparian land. The suit filed by the Applicant is for a declaration that the demolition was unconstitutional and the Applicant is seeking compensation.

3. The director of the Applicant who swore the affidavit in support of the application has stated that during the week preceding the filing of the application, he was informed that some unknown persons had gone to the suit property in a vehicle carrying timber, wheelbarrows, hoes, slashers and pangas. The persons also had what he calls plantations. When the Applicant's workers confronted the persons, the persons told them that they had been sent by the 2nd Respondent together with other unnamed persons.

4. The Applicant therefore contends that if an injunction is not granted, the Applicant might lose its property.

5. The Applicant's application is opposed by the 1st and 2nd Respondents through grounds of opposition filed on 8th June 2020. The 1st and 2nd Respondents contend that the Applicant has relied on hearsay and has not disclosed who trespassed on the suit property. The 1st and 2nd Respondents therefore contend that the Applicant's application is frivolous and is an abuse of the process of the court.

6. Though the other Respondents were given time to file their responses and submissions, they did not do as confirmed from the e-filing portal. I have considered the Applicant's application as well as the opposition thereto by the 1st and 2nd Respondents. I have also considered the submissions filed by the Applicant as well as those of the 1st and 2nd Respondents. The only issue for determination is whether the Applicant has made out a case for grant of injunction.

7. The Principles for grant of an injunction were well set out in the case of **Giella Vs Casma Brown & Co.Ltd (1973) EA 358**. Firstly, an Applicant must demonstrate a prima facie case with probability of success. Secondly, an injunction will not normally be granted, unless the applicant might otherwise suffer irreparable injury which may not be compensated in monetary terms. Thirdly if the court is in doubt, it will decide the application on a balance of convenience.

8. In the instant case, it is not contested that the Applicant is the registered owner of the suit property. The question which this court will seek to answer is whether the Applicant has demonstrated that there is an infringement on its property as to require protection by way of injunction. The deponent of the supporting affidavit has merely said that he was informed by his workers that unnamed persons had been to the suit property in a lorry having timber and what he calls plantations. In the photographs, annexed to the supporting affidavit, there is no evidence of any fencing or planting of anything. There is therefore no basis upon which this court can make any findings that there is interference with the suit property.

9. The premises which were on the suit property were brought down. The Applicant has filed a suit seeking compensation. Even if there was any interference, the Applicant can always get compensation for any infringement on his property if he succeeds to show such interference or infringement. I therefore find that no injunction can be granted to the Applicant. The upshot of this is that I find that the Applicant's application has no merits. The same is dismissed with costs to the 1st and 2nd Respondents.

It's so ordered.

Dated, Signed and Delivered at Nairobi on this 1st day of October 2020.

E.O.OBAGA

JUDGE

In the Virtual Presence of : -

Mr Mabachi for Mr Mare for 3rd Defendant

M/s Fatma for Mr Motari for 1st, 2nd and 3rd Defendants

Mr Mariaria and Mr Esibi for M/s Lumalas for Plaintiff

Court Assistant: Hilda

E.O.OBAGA

JUDGE