



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Environmental & Land Case 295 of 2009

JOHN NGARURO MUGO.....PLAINTIFF/APPLICANT

VERSUS

ELIJAH ADUL.....1ST DEFENDANT/RESPONDENT

ANN ATIENO ADUL.....2ND DEFENDANT/RESPONDENT

R U L I N G

1. The application before me is the Chamber Summons dated 16/06/2009 brought under Order XXXIX Rules 1 and 2 of the Civil Procedure Rules Sections 63 and 3A of the Civil Procedure Act Cap 21 Laws of Kenya and any other enabling provisions of the law seeking ORDERS:-

1. *THAT this application be certified as urgent and be heard ex-parte in the first instance.*

2. *THAT an order of temporary injunction do issue restraining the Defendants whether by themselves, their authorized agents, servants, employees, workers or otherwise howsoever from trespassing, developing, alienating, selling, charging, transferring, evicting the Plaintiff and/or in any other manner whatsoever dealing with or interfering/intermeddling with the Plaintiff's ownership, use and quiet possession of property known as L.R. No. NAIROBI/BLOCK 63/410 JAMHURI ESTATE PHASE II pending the hearing and determination of this suit.*

3. *THAT an interim injunction do issue restraining the Defendants whether by themselves, their authorized agents, servants, employees, workers or otherwise howsoever from trespassing, developing, alienating, selling, charging, transferring evicting the plaintiff and/or in any other manner whatsoever dealing with or interfering/intermeddling with the Plaintiff's ownership, use and quiet possession of property known as L.R. No. NAIROBI/BLOCK 63/410 JAMHURI ESTATE PHASE II pending the hearing and determination of this suit.*

4. *THAT the Provincial Police Officer – PPO Nairobi do supervise the enforcement of any orders issued by this Honourable Court.*

5. *THAT the costs of this application be provided for.*

2. The application is premised on the further grounds contained in the affidavit of John Ngaruro Mugo sworn on 16/06/2009 and on the other grounds on the face of the application, that is to say –

(i) *That at all material times the plaintiff was the beneficial and legal owner of all that property known as L.R. NO. NAIROBI/BLOCK 63/410 JAMHURI ESTATE PHASE II hereinafter referred to as*

the suit property having been allotted the same by the Nairobi City Commission on the 11th February 1992.

(ii) *THAT the suit property was formally transferred and registered in the Plaintiff's favour on the 28th March 2008 and a Certificate of Lease subsequently issued in his favour.*

(iii) *That the Defendants now stake a claim to the suit property on the premise that they are the legal owners which position is far from the truth as the Council records indicate otherwise with the plaintiff being recognized as the bona fide owner and having paid all due municipal rates to the city council of Nairobi.*

(iv) *The Plaintiff further contends that he has always held possession of the suit property since allocation until May, 2009 when the Defendants began harassing the plaintiff and issued threats to forcefully take possession and ultimately dispossess the plaintiff of the suit property.*

(v) *That the defendants are further illegally and without any colour of right interfering with the plaintiff's ownership records pertaining to the suit property and now threaten to evict the plaintiff from L.R. No. NAIROBI/BLOCK 63/410 JAMHURI ESTATE PHASE II with the ulterior objective of forcefully taking possession and ultimately dispossessing the plaintiff of the suit property with a view to develop the same to the exclusion of the plaintiff thus preventing the plaintiff from fully exercising its proprietary rights and obtaining the requisite benefits arising therefrom.*

(vi) *That the above notwithstanding the defendants have even gone a step further to intermeddle with the plaintiff's development approval granted by the city council of Nairobi by maliciously instigating and unduly influencing some officers at the Planning Department of the city council of Nairobi to cancel the Plaintiff's development approval vide a letter dated the 26th May 2009 under the pretext that there exists a dispute as to ownership of the suit property thus interfering with the plaintiff's development project.*

(vii) *That unless restrained by this Honourable Court, the Defendants may illegally take possession, sell, transfer, charge, alienate, intermeddle or deal with the suit property in a manner defeatist of the plaintiff's interest thus exposing the plaintiff to suffer irreparable loss and damage.*

3. The application was duly served upon the Defendants/Respondents on the 23/06/2009 for interpartes hearing on the 30/06/2009. The Defendants/Respondents did not appear for interpartes hearing on the 30/06/2009. To date, they have neither appeared nor filed Replying pleadings to the Plaintiff's application.

4. When the Plaintiffs/Applicants appeared on the 30/06/2009, counsel, Mr. Antony Gikara was asked to proceed with the application by way of written submissions. He filed the submissions on 7/07/2009. The Plaintiff had also filed a plaint contemporaneously with the application in which he avers that he is the registered owner of the suit property. He also says that the Defendants herein have recently started laying claim to the suit property, and that in furtherance of their claims, the Defendants are maliciously interfering with the Plaintiff's development while announcing to all and sundry that the Plaintiff acquired the suit property fraudulently. The Plaintiff says that he is apprehensive that unless the Defendants are restrained in their actions by a court order, they (defendants) may trespass onto, illegally take possession of, sell, alienate, continue to harass the Plaintiff's construction workers on site and sabotage the ongoing construction altogether. The Plaintiff prays for judgment against the Defendants jointly and severally for ORDERS –

(a) *THAT an order of permanent injunction do issue restraining the Defendants whether by themselves, their authorized agents, servants, employees, workers or otherwise howsoever from trespassing, developing, alienating, selling, charging, transferring, evicting the Plaintiff and/or in any other manner whatsoever dealing with or interfering/intermeddling with the Plaintiff's ownership, use and quiet possession of property known as L.R. No. NAIROBI/BLOCK 63/410 JAMHURI ESTATE PHASE II pending the hearing and determination of this suit*

(b) THAT the Defendants be condemned to pay the costs of this suit and all incidentals thereto;

(c) Any other or further relief that this Honourable Court may deem fit to grant.

5. In support of his claim and the prayers of injunction sought, the Plaintiff, John Ngaruro Mugo has annexed to his affidavit copies of the following documents:-

(a) Letter of allotment dated 11/02/1992 for plot No. 315 – Jamhuri Phase II.

(b) Beacon Certificate dated 11/02/1992 in respect of the same plot.

(c) Certificate of Lease dated 28/03/2008 in respect of the suit property.

(d) Certificate of Official search dated 11/11/2008

(e) Letter dated 24/02/2009 from the city council of Nairobi to the Plaintiff herein informing the Plaintiff that plot No. 315 Jamhuri Phase II Block 63/410 was allocated to J.M. Waithaka who later transferred it to John Ngaruro Mugo.

(f) Lease between the City Council of Nairobi and the Plaintiff herein.

(g) Approval of plans (undated)

(h) Disapproval of Plan Registration Number ER 183 for proposed maisonette to be erected on Plot No. BLK/63/410 Jamhuri Phase II dated 26/05/2009.

(i) Enforcement Notice issued on 27/05/2009 requiring the Plaintiff herein to stop illegal construction on the suit property.

6. The Defendants have not given any answer to the Plaintiff's claim on the suit property. The only question that arises is whether in the face of the evidence placed before this court the Plaintiff/Applicant has satisfied the conditions for the granting of injunctions as set out in the case of *Giella –vs- Cassman Brown & Company Ltd.* [1973] EA 358.

7. I am satisfied that the Plaintiff/Applicant has shown that he has a prima facie case with a probability of success and that unless the order sought is granted, the suit property is likely to go to waste. The Plaintiff/Applicant has shown to the court the Certificate of Lease in his favour. Accordingly, I allow the Plaintiff's/Applicant's application dated 16/06/2009 and make the following orders:-

(a) THAT an order of temporary injunction do issue restraining the Defendants whether by themselves, their authorized agents, servants, employees, workers or otherwise howsoever from trespassing, developing, alienating, selling, charging, transferring, evicting the Plaintiff and/or in any other manner whatsoever dealing with or interfering/intermeddling with the Plaintiff's ownership, use and quiet possession of property known as L.R. No. NAIROBI/BLOCK 63/410 JAMHURI ESTATE PHASE II pending the hearing and determination of this suit.

(b) Order in terms of prayer 4 of the application is declined.

(c) Costs of this application shall be borne by the Defendants/Respondents.

Orders accordingly.

Dated and delivered at Nairobi this 2nd day of October, 2009.

R.N. SITATI

JUDGE

Delivered in the presence of:-

Mr. Gikaria (absent) For the Plaintiff/Applicant

1st Defendant – Elijah Adul (present) for the Defendants/Respondents

Weche - court clerk