



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC CASE NO 93 OF 2020

MOSES M WAIRIMU.....1ST PLAINTIFF
PETER G OKIABERA.....2ND PLAINTIFF
JOSHUA KAMAU WILLY.....3RD PLAINTIFF
CATHYLINE WAWIRA NJERU.....4TH PLAINTIFF
ERICK KAHUTHU MUNDIA.....5TH PLAINTIFF
NANCY WANJIRU.....6TH PLAINTIFF
MARY WEGANDU NJERU.....7TH PLAINTIFF
KIHARA MAHARIA.....8TH PLAINTIFF
JOSIAH KIMANI.....9TH PLAINTIFF
MAGERET W IRUNGU.....10TH PLAINTIFF
DENIS MURIITHIL.....11TH PLAINTIFF
JOSEPH MACHARIA.....12TH PLAINTIFF
STEPHEN KIBICHO MUNDIA.....13TH PLAINTIFF
JOHN MBUGUA.....14TH PLAINTIFF
DAVID KARIUKI NJERU.....15TH PLAINTIFF
MOSES MUGABI.....16TH PLAINTIFF
SIMON MUNGAL.....17TH PLAINTIFF
REUBEN M MBASI.....18TH PLAINTIFF
GALDYS WANAGARI.....19TH PLAINTIFF
JOHN N KAMAU.....20TH PLAINTIFF
DANIEL NG'ANG'A.....21ST PLAINTIFF

JANET NJERI.....22ND PLAINTIFF

SUSAN NDUTA.....23RD PLAINTIFF

BENTA ADHIAMBO.....24TH PLAINTIFF

SIMON MBURU NJAU.....25TH PLAINTIFF

=VERSUS=

KENYA POWER & LIGHTING CO LTD.....1ST DEFENDANT

NAIROBI COUNTY GOVERNMENT.....2ND DEFENDANT

RULING

1. The Plaintiffs / Applicants filed a Notice of Motion dated 29th May 2020 in which they sought injunctive orders restraining the Respondents from demolishing their buildings at Dandora Terminus Jua Kali Phase III pending the hearing and determination of their application.
2. The Applicants had been given notice to demolish the illegal structures which they had erected on the 1st Respondents way leave failing which the structures were to be removed at the cost of the Applicants.
3. The Applicants contend that they had been allocated their respective plots by the Nairobi City Council which is the predecessor of the 2nd Respondent. The 1st Respondent connected electricity to their buildings and the 2nd Respondent connected them with water and sewerage services.
4. The Applicants now contend that the Respondents threats to interfere with their buildings in unjustifiable and that they have been paying rates to the 2nd Respondent and that there is a time the Applicants were promised with issuance of titles by the National Government.
5. The 1st Respondent opposed the Applicants application based on a replying affidavit sworn on 9th September 2020. The 1st Respondent contends that it owns the land on which they have erected a 132 kilowatt power transmission line, which supplies most of the electricity which is consumed in Kenya. The Applicants trespassed on to the way leave and put up illegal structures. The 1st Respondent issued notice for removal of the illegal structures which are a danger to the occupants.
6. The 1st Respondent states that even though it had connected electricity to the structures, this did not justify the Applicants to stay there and that the connection was as a result of a government directive that even people living in slums should be connected with electricity. The 1st Respondent therefore contends that the injunction as sought should not be granted.
7. On its part, the 2nd Respondent opposed the Applicants' application based on grounds of opposition dated 12th June 2020. The 2nd Respondent denies ever allocating the Applicants the plots in the area arguing that it would not have done that as the land belonged to the 1st Respondent. The 2nd Respondent also denied ever connecting the Applicants with water or sewerage services or even receiving rates from them.
8. In a supplementary affidavit sworn on 28th September 2020, the Applicants stated that the 1st Respondent had already demolished their houses but they nevertheless wanted injunctive orders as they seek compensation for the demolition.
9. I have considered the application by the Applicants as well as the opposition thereto by the Respondents. I have also considered the submissions by the parties herein. The only issue for determination is whether an injunction should issue as prayed.
10. The principles for grant of an injunction are well settled. In the case of **Giella Vs Cassman Brown Company Ltd (1973) EA 358**, it was held that an applicant seeking injunction has to first demonstrate that he has a prima facie case with probability of success. Second, an injunction cannot be granted if the injury which the applicant will suffer is capable of compensation. Lastly, if the court is in doubt, it will decide the application on a balance of convenience.
11. In the instant case, the Applicants have not demonstrated that the structures were built on property not owned by the 1st Respondent. In fact they have conceded that they have been staying on the disputed area for over 20 years. They do not dispute ownership of the area where they have put up the structures. To this extent, they have not demonstrated that they have a prima facie with probability of success.
12. On whether they will suffer injury which will not be compensated, there is no doubt that the structures which they were seeking to protect have already been demolished. If the Applicants will succeed to show that their buildings were unlawfully brought down, they will always be compensated in monetary terms. An injunction cannot therefore be granted and in any case an injunction cannot issue to prevent what has already happened.
13. I have no doubt in my mind on the application herein which has in any event been overtaken by events. I therefore do not have to

consider the same based on a balance of convenience. I find that this application by the Applicants lacks merit. The same is dismissed with costs to the Respondents.

It is so ordered.

Dated, Signed and Delivered at Nairobi on this 12th day of November 2020.

E.O.OBAGA

JUDGE

In the Virtual presence of:-

Mr Onyancha for Plaintiffs/Applicants

Mr Rono for 1st Respondent

Court Assistant: Hilda

E.O.OBAGA

JUDGE