



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC. CIVIL CASE NO. 488 OF 2017**

**CHRISTOPHER MUTURI & 22 OTHERS.....PLAINTIFFS**

**=VERSUS=**

**JOSAGARA ACADEMY LIMITED.....1ST DEFENDANT**

**K.T.T.C SHAMBA INVESTMENT SOCIETY.....2ND DEFENDANT**

**RULING**

1. On 25/7/2017, the plaintiffs brought a notice of motion dated 24/7/2017 seeking an order restraining the respondents against dealing with Land Reference Number 9363/199 (Original Number 9363/85/13) in any way whatsoever. Subsequent to that, the plaintiffs brought another notice of motion seeking a *status quo* order pending the hearing and determination of that very same application. A cursory examination of the second application reveals that upon disposal of the 1st application, there will be nothing to be disposed in the second application. I will therefore proceed to dispose the application dated 24/7/2017.

2. The plaintiffs' application for an injunctive order is supported by an affidavit sworn on 24/7/2017 by Christopher Muturi. He deposed that the applicants purchased various plots from KTTC Shamba Investment Society within Land Reference Number 9363/85/13. Each applicant was issued with a certificate of ownership. On 2/2/2017, the 1st respondent, in total disregard of the applicants' rights, illegally and unlawfully trespassed into the said plots and started constructing permanent structures thereon. It is on account of those actions that the applicant is seeking the injunctive orders.

3. The 1st respondent opposes the application through a replying affidavit sworn on 13/11/2017 by Melchisedec Nyamima Siamba. He deposed that the plaintiffs' claim relates to a property described as Land Reference Number 9363/199 (Original Land Reference Number 9363/85/13) while the 1st respondent is the registered proprietor of a different property, Land Reference Number 9363/85/3. He contended that the relevant survey plan for the area does indicate that Land Reference Number 9363/199 and/or 9363/85/13 to which the applicants are laying claim is a distinct and separate parcel of land from the 1st defendant's land which is Land Reference Number 9363/85/3. He urged the court to dismiss the plaintiffs' application.

4. The 2nd defendant supported the plaintiffs' application through a replying affidavit sworn by Zablun Alwanga Mukhaye. He deposed that the 2nd defendant purchased Land Reference Number 9363/199 and Land Reference Number 9363/200 and the two parcels of land are adjacent. He added that he had seen a copy of the 1st defendant's title and he believed the said title was fraudulent. He added that he visited Land Reference Numbers 9363/199 and 9363/200 and realized that the 1st defendant had encroached on the said parcels of land. He added that he reported to the Criminal Investigation Department Land Fraud Department to investigate the case. He described the 1st defendant as "fraudsters" who should be stopped by this court from taking away the suit land.

5. The application was canvassed through written submissions. I have considered the application together with all the materials placed before court. The single issue to be determined in this suit is whether the applicants have satisfied the criteria for grant of an interlocutory injunctive order as spelt out in **Giella v Cassman Brown (1973) EA 358**.

6. The dispute in this suit revolves around two titles. The first title is Number IR 114007 in which Land Reference Number 9363/199 (Original Number 9363/85/13) is comprised. From the evidence presented by the plaintiffs, this particular title is registered in the name of **Kenya Technical Teachers College Worker Co-operative Saving and Credit Society Limited**. It measures 3.54 hectares. The second title is Number IR 164396 in which Land Reference Number 9363/85/3 measuring 3.111 hectares is comprised. This particular title is registered in the name of **Josagara Academy Limited**. The plaintiffs are challenging this particular title, contending that it has been fraudulently procured out of the first title.

7. On its part, the 1st defendant has exhibited what it calls area survey map, showing that the two parcels of land are distinct. He has also exhibited copy of a surveyor's report indicating that the regional surveyor had, at the request of the Directorate of Criminal Investigation, placed clear beacons showing the boundary. Also exhibited is a letter dated 12/9/2017 by the DCIO-Kasarani indicating that Zablun Alwanga Mukhaye had sold some plots belonging to the 1st defendant to some members of the public.

8. Kenya Technical Teachers College Worker Co-operative Saving and Credit Society Limited who are the registered proprietors of Title Number 114007 have not complained about any encroachment against the land or any issuance of a parallel title in respect of the land. Secondly, there is no evidence that the registered proprietor sold the said same land to the plaintiffs. The plaintiffs have relied on a single sale agreement between Zablon Alwanga Mukhaye and Tabitha Mumbi Njogu indicating that the former sold to the latter Plot Numbers A137 and A138 being part of Land Reference Number 9363/200 at Kshs 250,000 per plot. The sale agreement does not relate to Land Reference Number 9363/199.

9. Thirdly, whereas the plaintiffs together with Mr Mukhaye allege that the 1st defendant's title is fraudulent, they have not placed before the court any material to support that allegation. They have similarly not pleaded the particulars of fraud. Fourthly, they have not joined the Chief Land Registrar and M/s Kenya Technical Teachers College Worker Co-operative Savings and Credit Society Limited who, in my view, would be necessary defendants in a claim of fraud relating to the suit land.

10. The totality of the foregoing is that the plaintiffs have failed to satisfy the criteria for grant of an interlocutory injunction as spelt out in **Giella v Cassman Brown (1973) EA 358**. The net result is that the Notice of Motion dated 24/7/2017 is dismissed for lack of merit. The plaintiffs shall bear the costs of the application.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 23RD DAY OF JANUARY 2019.**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

Momanyi holding brief for Okao advocate for the plaintiff

June Nafula - Court Clerk