



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC. CASE NO. 437 OF 2018

HOMEBOYZ ENTERTAINMENT LIMITED.....PLAINTIFF

VERSUS

SECRETARY, NATIONAL BUILDING INSPECTORATE.....1ST DEFENDANT

KENYA AIRPORTS AUTHORITY.....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

RULING

The Plaintiff is the registered owner of land reference number 209/12430 (“the Suit Property”). It claims that the 1st Defendant unlawfully issued a notice dated 25/9/2018 requiring it to remove its go down erected on the Suit Property and has threatened to demolish the Plaintiff’s structures. Through the application dated 8/10/2018, the Plaintiff seeks a temporary injunction to restrain the Defendants or their agents from trespassing, entering, demolishing structures, occupying or in any manner interfering with the Suit Property pending hearing and determination of the suit.

The Plaintiff claims it purchased the Suit Property together with the buildings and improvements on it on 26/8/2014 and got it duly registered in its name. The Plaintiff is apprehensive that unless the injunctive orders sought are issued, the Defendants will evict it and demolish its structures on the Suit Property thus occasioning it huge economic losses. The Plaintiff’s Director, Rose Nyaguthi Maina- Rabar swore the affidavit in support of the application and attached a copy of the title showing that the Plaintiff was registered as the owner of the Suit Property on 26/8/2014. It charged the land to Jamii Bora Bank Limited on the same date. She averred that the Plaintiff enjoyed quiet and peaceful possession of the Suit Property from 2014 until 25/9/2018 when it received a fourteen days’ notice from the 1st Defendant requiring it to remove its structures from the Suit Property. The notice states that the structures and go downs listed were illegally developed and have encroached on Kenya Airports Authority land at the Jomo Kenyatta International Airport (JKIA) on L.R. No. 21919, Wilson Airport land on L.R. No. 209/13080 and Embakasi Airport Staff Quarters.

Clement Ocholla, the Senior Assistant Secretary at the National Buildings Inspectorate in the Ministry of Transport, Infrastructure, Housing and Development swore the Replying Affidavit on behalf of the 1st and 3rd Defendants. Some of the duties of the National Buildings Inspectorate Department is to profile unsafe and dangerous buildings and structures and to demolish such structures. The Department also demolishes and removes unlawful encroachments on road reserves, riparian land, wayleaves set aside for power lines, railways, pipelines and sewer lines. The 1st and 3rd Defendants maintain that the Plaintiff’s property is encroaching on the JKIA land and ought to be demolished. The Defendants annexed a copy of the topographical map showing the plots encroaching on JKIA land and argued that the encroachment which is on the flight path posed a security risk to the country’s airspace. Additionally, that no approval from the Kenya Civil Aviation Authority was obtained for the use of the JKIA land.

The 2nd Defendant’s Corporation Secretary, Katherine Kisila swore its Replying Affidavit in opposition to the application urging that it has been wrongly sued since no specific act of omission or commission is attributed to it. It further argues that the notice complained of did not emanate from the 2nd Defendant and that in any event it was not addressed to the Plaintiff but was a general letter.

Parties filed submissions which the court has considered. The Defendants maintain that the Plaintiff’s application does not meet the threshold for the grant of injunctive relief. The issue for determination is whether the court should grant the orders of injunction sought by the Plaintiff.

The Plaintiff relied on the protection of the right to property afforded by the law under Article 40 of the Constitution and Sections 25 and 26 of the Land Registration Act in support of its claim. It also relied on various court decisions on injunctions some of which the court notes were judgements following hearing of the suits. This suit is yet to be heard.

The 1st and 3rd Defendants urged the court to disallow the application for injunction while arguing that this would mean the continued existence of the Plaintiff's buildings on the flight path. They also urged the court to take into consideration the harm that will result to the public interest if an order of temporary injunction is granted.

The court has considered the applications, the affidavits and the rival submissions of counsel. By the time the Plaintiff bought the Suit Property on 26/8/2014, the buildings and improvements were already on it. It has been in occupation of the Suit Property which the Defendants now claim is on the flight path. The 2nd Defendant did not confirm in its affidavit that the Suit Property lies on the airport's flight path as claimed by the 1st and 3rd Defendants. It only maintained that it was wrongly sued since no specific act of commission or omission was levelled against it.

The court is of the view that parties ought to set down the suit for hearing within six months when a determination can be made as to whether the Plaintiff's land falls within the airport land as the Defendants claim. Parties are directed to maintain the *status quo* pending hearing and determination of the case.

Each party will bear its own costs.

Dated at Nairobi this 23rd day of January 2019.

K. BOR

JUDGE

In the presence of: -

Ms. D.C. Ronoh holding brief for Mrs. C.J. Waiyaki for the Plaintiff

Mr. M. Mutinda holding brief for Ms. Wachanga for the 2nd Defendant

Mr. V. Owuor- Court Assistant

No appearance for the 1st and 3rd Defendants