



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. NO.431 OF 2018.

JUDY NYARUAI MUHORO.....PLAINTIFF

VERSUS

NAIROBI CITY COUNTY GOVERNMENT.....1ST DEFENDANT

NATIONAL ENVIRONMENT MANAGEMENT

AUTHORITY.....2ND DEFENDANT

HON. ATTORNEY GENERAL.....3RD DEFENDANT

INSPECTOR GENERAL, NATIONAL POLICE SERVICE... ..4TH DEFENDANT

NATIONAL CONSTRUCTION AUTHORITY.....5TH DEFENDANT

NATIONAL YOUTH SERVICE.....6TH DEFENDANT

CABINET SECRETARY, MINISTRY OF

ENVIRONMENT AND FORESTRY.....7TH DEFENDANT

RULING

This suit was instituted by way of a plaint on 3rd October 2018. Contemporaneously with the filing of the plaint, the Plaintiff filed the application seeking a temporary injunction to restrain the Defendants’ or their agents from interfering with the perimeter wall and other structures erected on the property known as land reference number **Nairobi/Block 90/126, Loresho** (“the Suit Property”). The Plaintiff also seeks to have the order remain in force pending hearing and determination of the suit, as well as the costs of the application. The Plaintiff’s application was supported by the facts in her affidavit sworn on 3rd October 2018.

The Plaintiff’s case is that in February 2016, she presented a development plan to the 1st Defendant for approval in respect of the proposed boundary wall she intended to put up around the Suit Property, which she maintained that she owns and is its registered proprietor. She attached a copy of certificate of lease for the Suit Property to her affidavit.

The Plaintiff contended that she paid to the 1st Defendant the requisite fees for approval of the building plan and construction site board in respect of the proposed perimeter wall. She stated that the development plan was approved and she proceeded to erect a perimeter wall around the Suit Property. She attached a copy of the receipt issued on payment of the fees for approval of the building plan and construction site board.

The Plaintiff contended that the wall was earmarked for demolition by the 1st Defendant in August 2018. She also contended that while constructing the wall, she observed the six-meter riparian reserve based which was measured from the high-water mark of the river.

The 1st Defendant opposed the application through the Replying Affidavit sworn by its Chief Officer in charge of Urban Planning, who admitted that approval was granted to the Plaintiff on condition that she would comply with the requirements set since the land in question is adjacent to a riparian reserve. One of the conditions was to ensure that the fence bordering the twelve-metre riparian reserve would be a chain link, which was intended to ensure that there is free flow of the river water running through the Suit Property as opposed to a masonry wall which the Plaintiff is alleged to have constructed hence breaching the terms of the approval granted by the 1st Defendant.

The 5th Defendant opposed the Application and relied on the replying affidavit sworn by its Regional Manager, who stated that it issues compliance certificates to all projects upon registration with the Authority; and that the perimeter wall in question was not registered for approval with the authority.

The 3rd, 4th, 6th and 7th Defendants filed consolidated grounds of opposition to the application. One of the grounds raised is that the wall on the Suit Property was identified as having been put up on riparian land by a multi-agency team drawn from various State departments and was earmarked for demolition for purposes of reclaiming and restoring the riparian land. The 3rd, 4th, 6th and 7th Defendants relied on Article 69 of the Constitution which gives the State the mandate to eliminate processes that are likely to endanger the environment.

During the hearing of the application, counsel for the Plaintiff submitted that there are squatters outside the Plaintiff's perimeter wall, who posed a threat of invading the Plaintiff's property if the perimeter wall were to be demolished. He also submitted that the wall was approved by the 1st Defendant, and that the Plaintiff complied with the conditions for the approval, hence no prejudice would be suffered by the Defendants if the injunctive orders were granted.

The 1st Defendant's counsel submitted that the Plaintiff ought to have kept the 12-metre riparian reserve. He submitted that the wall was marked with an X as it did not comply with Section 38 of the Physical Planning Act.

This is an application for interim injunction. The principles for issuing injunctions are well settled. The court needs to be satisfied that the Plaintiff has made out a *prima facie* case with a probability of success. An injunction will not normally be granted unless damages are an inadequate remedy, and if in doubt, the court decides the application on a balance of convenience.

The wall sought to be demolished has been in existence for a while. It is just and meet for parties to maintain the *status quo* for six months during which period the matter must be set down for hearing for the court to make a determination as to whether the Plaintiff complied with the legal requirements in erecting the wall; and if the wall ought to be brought down.

Each party will bear its own costs.

Delivered at Nairobi this 23rd day of January 2019.

K. BOR

JUDGE

In the presence of: -

Mr. Y. Nyachiro holding brief for M. Muchemi for the Plaintiff

Ms. R. Mogire for the 1st Defendant

Ms. R. Mogire holding brief for Ms. Getugi for the 5th Defendant

Mr. V. Owuor- Court Assistant

No appearance for the 2nd, 3rd, 4th, 6th and 7th Defendants