



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 401 OF 2016

JOSEPHAT MUHORO GICHEHA.....1ST PLAINTIFF/APPLICANT

LUCIA MBEERE.....2ND PLAINTIFF/APPLICANT

=VERSUS=

COUNTY GOVERNMENT OF NAIROBI...DEFENDANT/RESPONDENT

RULING

1. This is the Notice of Motion dated 17th June 2016 brought under Order 51 Rule 1, 3, 4, and 13, Order 40 Rules 1 and 2 of the Civil procedure Rules, Section 1A, 1B, 3 and 3A, 63€ of the Civil procedure Act and all enabling provisions of the law.

2. It seeks order:-

(1) That the court be pleased to direct that a temporary injunction be and is hereby issued against the defendant, her agents, servants and/or employees not to demarcate, place beacons, lease, transfer, mortgage, allocate to members of the public and/or do anything relating to land known as LR No. 209/14311 along Kangundo Road Nairobi pending the hearing and determination of this application.

(2) That in the alternative the court be pleased to direct that the interests of the plaintiffs/applicants herein be recognized and/or acknowledged before the process of allocating the land in issue commences.

(3) That costs of this application be borne by the defendant.

3. The grounds are on the face of the application and are set out in paragraphs 1 to 4.

4. The application is supported by the affidavit of Josephat Muhoro Gicheha the 1st plaintiff/applicant herein sworn on the 17th June 2016.

5. The application is opposed. There are grounds of opposition filed by the defendant/respondents dated 30th June 2017.

6. On the 18th July 2016, the court directed that the application be canvassed by way of written submissions.

7. By 8th October 2018 only the plaintiffs/applicants had filed their submissions.

8. It is the plaintiffs'/applicant's submissions that the plaintiffs were promised certain plots within KCC Village Squatters Settlement Scheme along Kangundo road by the defendant. The plaintiffs/applicants then paid certain sums of money to the defendant. By February 2016 the defendant started the process of pointing out plots and beacons to the members of the public without involving the plaintiffs. The plaintiffs are likely to suffer irreparable loss which cannot be compensated by an award of damages as the land is with Nairobi. The balance of convenience tilts in favour of granting the orders sought.

9. It is the defendant's/respondent's case that there has never been any allotment of the said plots No 327 and 326 KCC Village Squatters Settlement sachment to the plaintiffs/applicants and they have been in illegal occupation of the suit properties. The defendant/respondent has never demanded for nor has it ever received standard premiums, ground rent, service of fees or fees for beacon certificates from the plaintiffs. The defendant/respondent denies the authenticity of the documents of ownership produced by the plaintiffs.

10. I have considered the pleadings, the notice of motion, affidavit in support and the annexures. I have considered the grounds of opposition and the written submissions of counsel. The issue for determination are:-

(i) Whether the plaintiffs/applicants' application meets the threshold for grant of temporary injunction.

(ii) Who should bear costs?

11. The principles were set out in the precedent setting case of **Giella vs Cassman Brown & Company Ltd [1973] EA 358**. In the case of **Mrao Limited vs First American Bank of Kenya Ltd & 2 Others [2003] KLR 125**. I am guided by the above authorities.

12. The plaintiffs/applicants have annexed their application letters of allotment in respect of plot numbers 326 and 327 KCC Village Squatters Settlement Scheme. The defendant/respondent has denied that the said plots were ever allocated to the plaintiffs/applicants. It denies the authenticity of the said documents of ownership being relied by the plaintiffs/applicants.

13. In the case of **Njenga vs Njenga (1991) KLR 401 Bosire J** (as he then was) held that :-

“an injunction being a discretionary remedy is granted on the basis of evidence and sound legal principles”.

I am not persuaded by the facts presented by the plaintiffs/applicants that they deserve the orders sought. I find that they have failed to establish a prima facie case with a probability of success at the trial.

14. I also find that the plaintiffs/applicants have failed to demonstrate that they will suffer irreparable loss which cannot be compensated by an award of damages if these orders are not granted. I rely in the case of **Ooko vs Barclays Bank of Kenya Limited [2002] KLR 394**.

15. The upshot of the matter is that this application is not merited and the same is dismissed. The costs of the application do abide the outcome of the main suit.

It is so ordered.

Dated, signed and delivered in Nairobi on this 13TH day of FEBRUARY 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the 1st & 2nd Plaintiff

.....Advocate for the Defendant

.....Court Assistant