



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT**

**AT MILIMANI**

**ELC NO. 238 OF 2014**

**TWIGA CONSTRUCTION COMPANY.....1<sup>ST</sup> PLAINTIFF**

**ALLIED INDUSTRIES LIMITED.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**DIRECTOR OF PHYSICAL PLANNING NAIROBI COUNTY.....1<sup>ST</sup> DEFENDANT**

**COUNTY SECRETARY NAIROBI COUNTY.....2<sup>ND</sup> DEFENDANT**

**NATIONAL LAND COMMISSION.....3<sup>RD</sup> DEFENDANT**

**AND**

**FOXGROVE LIMITED.....INTERESTED PARTY**

**RULING.**

1. The plaintiffs/applicants filed a Notice of Motion dated 7/12/2018 in which they seek the following orders:-

**1. Spent**

**2. That the 2<sup>nd</sup> defendant is in breach of the consent order entered by this Honourable Court on 6<sup>th</sup> November 2018.**

**3. That an order of prohibition do issue against the 2<sup>nd</sup> defendant by its agents, employees, servants or officers prohibiting it's from demolishing property within the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs property pending the hearing and determination of this application.**

**4. That an order of prohibition do issue against the 2<sup>nd</sup> defendant by its agents, employees, servants or officers prohibiting it's from demolishing property within the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs property pending the hearing and determination of the main suit.**

**5. A declaration that the forcible entry, seizure, possession and impending demolition of property within the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs' property amounts to a violation of the plaintiffs' rights under Article 40 of the Constitution.**

**6. A permanent injunction restraining the defendants either by themselves, their agents and or servants from harassing, threatening, intimidating, trespassing upon, demolishing and or in any manner whatsoever interfering with the plaintiffs' structures erected on LR Number 29/6/26 and LR Number 11880/2.**

**7. That the 2<sup>nd</sup> defendant be held liable to compensate the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs by way of damages for any infringement of their rights and privileges as registered owners of LR Number 29/6/26 and LR Number 11880/2 respectively.**

2. The dispute between the applicants and the 1<sup>st</sup> and 2<sup>nd</sup> respondents is over the blockage of a public access road which runs across the properties owned by the applicants. The applicants' properties are separated by the public access. It is the public access road which the interested party uses to access its property which abuts the applicants' properties.

3. The applicants had filed two applications in which they sought for injunction against the 1<sup>st</sup> and 2<sup>nd</sup> respondents who wanted to demolish

the wall blocking the public access road. The two applications were dismissed vide a ruling delivered on 21/6/2017.

4. In October 2018, the applicants blocked the public access road forcing the interested party to file an application for injunction on 18/10/2018. The applicants also filed a similar application on 30/10/2018 in which they sought injunctive orders restraining the 1<sup>st</sup> and 2<sup>nd</sup> respondent as well as the interested party from demolishing their structures on the disputed public access road. On 6/11/2018 the two application were compromised in the following terms:-

***“The applicants undertook not to carry out any new constructions or development on the way leave / access road in dispute and were to remove any construction materials and debris thereon. The applicants also undertook to open up the gate constructed on the way leave during the day”.***

5. The applicants have now moved to court contending that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have breached the consent which was recorded in that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have threatened to demolish properties within the disputed area by marking them for demolition. The applicants contend that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have already demolished part of the perimeter wall on the applicants’ properties.

6. The applicants contend that the action by the 1<sup>st</sup> and 2<sup>nd</sup> respondents is contrary to the consent which was recorded on 6/11/2018 which consent was meant to preserve the application dated 19/10/2018 which is pending for hearing.

7. The applicants’ application was opposed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents through a replying affidavit sworn on 25/2/2019. The 1<sup>st</sup> and 2<sup>nd</sup> respondents contend that the applicants’ application is only meant to delay the hearing of the main suit which was filed in 2014 and the application is an abuse of the process of the court as a similar application by the applicants has already been dismissed and another similar one filed on 30/10/2018 was compromised. The 1<sup>st</sup> and 2<sup>nd</sup> respondents further contend that they have not breached any consent order or interfered with their properties. The respondents contend that their only interest is to open up the access road to the public.

8. I have carefully considered the applicants’ application and the opposition to the same by the 1<sup>st</sup> and 2<sup>nd</sup> respondents. I have also considered the submissions by the applicants. The applicants are not being clear on what they want. Whereas in the application they are seeking injunctive orders, in their submissions they are seeking punishment for contempt of court order. There is absolutely no evidence of contempt of the consent order recorded on 6/11/2018.

9. It is clear that the applicants are intent on having injunctive orders which orders they have been denied before. The applicants are the ones who are blocking a public access road. The consent which was recorded was to effect that the applicants were to cease from carrying out any new construction and they were to leave the gate blocking access to the interested parties property open during the day. I therefore do not see the basis of the applicants’ claim that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have breached the consent which was recorded. I therefore find no merit in this application which is dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

It is so ordered.

***Dated, Signed and delivered at Nairobi on this 31<sup>st</sup> day of October, 2019.***

**E.O.OBAGA**

**JUDGE**

In the presence of:-

Mr Mugo for Mr Kamunda for Plaintiff and

M/s Mburu for Mr Nyawara for interested party.

Court Clerk : Hilda

**E.O.OBAGA**

**JUDGE**