



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC PETITION NO. 38 OF 2019

IN THE MATTER OF:ARTICLE 22(1) OF CONSTITUTION OF KENYA:

AND

IN THE MATTER OF: CONRAVENTION OF RIGHTS & FUNDAMENTAL FREEDOMS UNDER ARTICLES 2(1), 10(1) (2), 19, 20(2) & 40 OF THE CONSTITUTION OF KENYA:

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 40 OF THE CONSTITUTION REGARDING RIGHT TO PROPERTY;

BETWEEN

PETER SAKALA, ELIJAH SEKAH, SELINAH OKUKU, JOSECK OTENGO & SAMUEL OUMA (Suing as members and trustees of and on behalf of members of Ex – Ranching Employees Self-Help Group).....PETITIONER

AND

EMBAKASI RANCHING COMPANY LIMITED.....1ST RESPONDENT

THE NAIROBI CHIEF LAND REGISTRAR.....2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

Through the application dated 23/07/2019, the Petitioner seeks an injunction to restrain the 1st Respondent, its agents, servants, employees or any other person acting through it from dealing, constructing, alienating, trespassing or in any way interfering with the property known as land reference number (L.R. No.) 10904 Ruai Nairobi, pending hearing of the petition. The Petitioner also seeks an order directing the 1st Respondent to vacate the suit property and remove any structures erected on it at its own cost and an order to prohibit the 1st Respondent or its agents from interfering with the Petitioner’s use and enjoyment of the suit land pending hearing and determination of the application and the petition. The Petitioner seeks to have the order enforced by the Officer Commanding Ruai Police Station and the Nairobi County Commissioner.

The application was pegged on the grounds that the Petitioner has a *prima facie* case with very high chances of success, since members of the Petitioner are the registered owners, proprietors and legally entitled claimants to the suit land which they claimed they have resided on for close to 50 years and that they have undertaken extensive developments on the land.

The Petitioner claims it acquired prescriptive property interest and an indefeasible title to the suit property. The Petitioner claims that the 1st Respondent unlawfully invaded the suit property, meted violence against members of the Petitioner and maliciously damaged their property. It claims the 1st Respondent has embarked on evicting members of the Petitioner from the suit property in contravention of their rights to property. It also claimed that the 1st Respondent subdivided the suit property on the strength of a questionable title document.

The Petitioner urged that its members stand to suffer irreparable harm unless the injunctive orders are granted since any interference with

their possession of the suit property will render them homeless, destitute and will have their lives thrown into a tailspin whose physical, psychological and emotional stress and suffering can never be repaired. The Petitioner contended that the balance of convenience tilts in favour of granting the temporary injunctive relief sought for the reason that the 1st Respondent has never had possession of the suit property nor has it developed the suit land property. The Petitioner submitted that the livelihood of the 1st Respondent is not dependent on the suit property hence damages would sufficiently compensate it unlike the Petitioner whose harm would be irreparable. The Petitioner urged that it is in the interest of justice that the orders sought are issued to the Petitioners to enjoy rights guaranteed under the Constitution.

The application was supported by the affidavit of Peter Sakala, Chairman of the Petitioner sworn on 31/07/2019. He deponed that the suit land was originally owned by Juja Properties (East Africa) Limited, and annexed copies of the title deed and survey map for this land. He averred that members of the Petitioner are proprietors of the suit land measuring approximately 2005 acres, which is a portion of L.R. No. 10904 measuring 5005 acres.

He deponed that the 1st Respondent had willfully and without right entered upon the Petitioners portion of the property, and subdivided it. He attached photographs which he claimed showed events that took place between 4/07/2019 and 31/07/20019. He also deponed that the process through which the 1st Respondent claims to have acquired its secondary title to the suit property was scanty on pertinent material information and was not supported by any legal paper trail, and therefore smacks of illegality and irregularity of procedure.

There is an affidavit of service on record. The Respondents were served but they did not respond to the application. The court has considered the application. This being an application for interlocutory injunction, the Petitioner must satisfy the conditions laid down in **Giella v Cassman Brown & Co. Limited (1973) EA 358** for the grant of the orders sought. It must show that it has a *prima facie* case with a probability of success and that it stands to suffer irreparable damage if the orders are not granted. If the court is however in doubt, it will decide the matter on the balance of convenience. The Petitioner claims to be the registered proprietor of 2005 acres, which is a portion of L.R. No. 10904 measuring 5005 acres. The Petitioner's claim is based on the assertion that its members are the registered proprietors of 2005 acres of the suit land, and have lived on the property for over 50 years. No evidence was given of the Petitioner's members being registered as the owners of the land measuring 2005 acres. The Petitioner annexed a copy of a title registered in the name of Juja Properties (East Africa) Limited issued in 1963 in respect of L.R. No. 10904 for 940 years and four months from 1/7/1963. The Petitioner also produced a copy of a certificate of title registered in the name of the 1st Respondent issued in 1987 for L.R. No. 10904/5 measuring 11.7 hectares. The Petitioner does not show the process through which it acquired title over part of the land from Juja Properties (East Africa) Limited. The certificate of registration for the Self-help Group annexed to the affidavit shows that the Petitioner was registered in 2012.

The court has considered the application together with the affidavit and supporting documents and finds that the Petitioner has failed to demonstrate on a balance of probabilities that the members of Ex Ranching Employees Self Help Group own the suit land. The Petitioners have not demonstrated the interest they have in the suit land which would demonstrate that they have a *prima facie case*.

The court declines to grant the orders sought in the application dated 23/07/2019. Costs shall be in the cause.

Dated and delivered at Nairobi this 13th day of November 2019

K.BOR

JUDGE

In the presence of: -

Mr. V. Owuor- Court Assistant

No appearance for the Petitioner and the Respondents