



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO.149 OF 2017

MARIONSON HOLDINGS LIMITED T/A

MARION PREPARATORY SCHOOL.....PLAINTIFF

=VERSUS=

CYRUS NGUGI MUGONYA & 3 OTHERS.....DEFENDANT

RULING

1. The Plaintiff/Applicant filed a Notice of Motion dated 6th March 2017, in which it sought the following orders:-

1. Spent

2. Spent

3. The Court be pleased to grant an injunction restraining the respondents whether by themselves, their agents, employees and/or servants from trespassing on, wasting constructing on, disrupting, alienating or otherwise interfering or dealing with land parcel known as Primary School Site Kahawa West, Nairobi pending the hearing and determination of this suit.

4. The Officer Commanding Kiamumbi Police Station do enforce compliance of the orders herein.

5. The cost of this application be provided for.

6. The Honourable Court be pleased to make such further orders as it may deem just and expedient in the circumstances of this case.

2. The applicant contends that it was allocated land designated as primary school site Kahawa West, Nairobi by the then Nairobi City Commission on 19th May 1992. The land was **2.82 hectares**. The applicant later established a school known as Marion Preparatory School on the land.

3. On 11th February 2017, the respondents forcefully invaded the land and started construction on the same. A report was made at Kiamumbi Police Station but there was no assistance. A meeting was called between the representatives of the applicant and the respondents. The said meeting was convened by the County Commissioner. It was agreed that there was to be no further construction until the ownership dispute was resolved. Despite this agreement, the respondents are still carrying on construction. The applicant contends that the construction is going on at the school's playground.

4. The respondents opposed the applicant's application through a replying affidavit sworn on 17th March 2017, in which the respondents contend that the issues the applicant is raising were settled vide High Court Miscellaneous application No.252 of 2006. The applicant was advised not to encroach on other persons land. The respondents contend that they have allotment letters in respect of their respective portions for which they paid the requisite fees. They contend that the applicant's application is misconceived and is an abuse of the process of the court. The applicant should let their constructions to go on and confine itself to the land allocated to it.

5. I have looked at the further affidavit sworn on behalf of the applicant on 29th March 2017, and the one sworn on behalf of the respondents on 29th May 2017. What has emerged from these further affidavits is that besides the land allocated to the applicant, the applicant applied for additional land from Nairobi City Council. The applicant contends that it was allocated the additional land which is **5.2 hectares**. The respondents on their part allege that there was no additional land given to the applicant and that what the applicant is trying to do is to

encroach on to the parcels which were allocated to the respondents and other persons.

6. This is an application for injunction. At this stage what the Court is expected to do is to establish whether the applicant has made out a case for grant of an injunction. It is not time for the court to decide on whether parties to this dispute paid for their allotment within the stipulated time. What has emerged from the further affidavits is that the applicant has not been candid.

7. The application was made on the basis of allocation of **2.82 hectares**. This is the land which the applicant claims has been encroached on. When further affidavits were filed it has turned out that the dispute seems to be on the additional land which the applicant was pursuing from the Nairobi City Council. From the documents availed, it is apparent that the additional allocation was not granted. The applicant went to court in 2006 seeking orders to compel the officers of the Nairobi City Council to issue it with allotment letter for additional land it was seeking. This seems not to have happened and as matters stand, the applicant was never given the additional land if documents annexed to the further affidavit of the respondents is anything to go by.

8. The Director of the Housing Development Committee of the City Council had recommended that the applicant be given additional land in exchange of surrender of its land at Dandora. This recommendation was however not implemented as it was found that the land which the applicant wanted had already been allocated to other individuals and was not under the jurisdiction of the Nairobi City Council. It is therefore clear that the applicant has failed to demonstrate that it has a prima facie case with probability of success. This being the case and owing to the fact that the applicant has not been candid from the beginning, I find that the applicant's application lacks merit. The same is hereby dismissed with costs to the respondents. The injunctive orders which were granted on 20th March 2017, and extended subsequently are hereby discharged.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 8th day of March 2018.

E.O.OBAGA

JUDGE

In the presence of ;-

Mr Leparmarai for applicant

M/s Gitari for Mr Orina for Respondent

Court Assistant: Hilda

E.O.OBAGA

JUDGE