



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 149 OF 2018

SAMUEL MAINA KABIRU.....1ST PLAINTIFF

ELIZABETH GACHAMIU MUIYURO.....2ND PLAINTIFF

VERSUS

KENYA NATIONAL HIGHWAY AUTHORITY.....DEFENDANT

RULING

(Application for injunction; respondent giving notice of demolition of the applicants' premises claiming that it is on a road reserve; applicants asserting that the premises is not on a road reserve and applying for injunction to stop the notice; no response filed by the respondent; prima facie case established; application allowed)

1. This suit was commenced by way of a plaint which was filed on 17 April 2018. Alongside the plaint, the plaintiffs filed an application for injunction against the defendant which application is the subject of this ruling.

2. The plaintiffs/applicants are the administrators of the estate of the late Amos Kabiru Kimemia (deceased). They have averred that the deceased, and one Hannah Wanjeri Kabiro (also deceased), are registered as proprietors of the land parcel Nakuru Municipality/ Block 16/485. It is pleaded that through a letter dated 15 March 2018, the defendant/respondent, issued a notice threatening to demolish the premises in the suit land on the allegation that the same are built on a road reserve. It is contended that none of the buildings on the suit land are built on any road reserve but are confined within the boundaries of the suit land. In the suit, the applicants have inter alia sought orders for a permanent injunction to restrain the respondent from demolishing the buildings on the suit land or interference with the same. In the application for injunction, the applicants wish to have the respondent restrained from taking the threatened action of demolishing the premises on the suit land until this case is heard and determined.

3. Despite being served, the respondent has neither entered appearance nor replied to the application for injunction, and the only material that I have is therefore that supplied by the applicants.

4. Among the documents annexed in the supporting affidavit, sworn by Mr. Samuel Maina Kabiru, is the impugned notice dated 15 March 2018. The notice inter alia states that there is encroachment into a road reserve and gives the applicants 30 days to remedy the encroachment and in default the respondent will proceed to do so. The deponent has also annexed a surveyor's report to demonstrate that the buildings in the suit land are not encroaching on any road reserve.

5. I have considered the material tendered before me. The allegation by the respondent as noted in its notice of 15 March 2018, is that the applicants have developed on a road reserve. Apart from the notice, I have no material before me which would suggest that the applicants have made any development on any road reserve. The applicants have demonstrated, prima facie, that they have confined their activities within the boundaries of the suit land. I am therefore of the view that the applicants deserve the orders of injunction pending hearing of this suit. If the respondent proceeds to act as threatened, there is no question that the applicants stand to suffer irreparable loss.

6. I therefore allow this application for injunction and make the following orders :-

(i) That pending the hearing and determination of this suit, the respondent is hereby restrained from demolishing any structures, or interfering in any way, with the premises or buildings, built within the land parcel Nakuru Municipality/ Block 16/485, irrespective of whether or not the respondent believes that this premises is situated on a road reserve.

(ii) That the applicant shall have the costs of this application.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 17TH day of May 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Mr. Kamonjo Kibiru for the applicants.

No appearance for the respondent.

Court Assistant : Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU