



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 346 OF 2015

THOMAS KIMANI KAMAU & 63 OTHERS.....PLAINTIFFS

=VERSUS=

MINISTRY OF LAND,

URBAN DEVELOPMENT & 3 OTHERS.....DEFENDANTS

RULING.

1. The applicants are among members of Korogocho slum in Nairobi. In or around 2008, the Government through the Ministry of Lands, Housing and Urban Development, embarked on a process of upgrading the slum by providing street lighting, clinics, roads and foot bridges. To ensure that the project was fully embraced by the residents, a committee of residents was elected to ensure there was full public participation.
2. When the project started, it became inevitable that some structures were to be demolished to pave way for construction of roads and other facilities. Those structures which were to be demolished were marked with an X and their owners were asked to remove them. It is after the marking of the structures that the applicants moved to court and filed a notice of motion dated 29th April 2015 in which they seek to stop the 1st, and 3rd respondents from demolishing their structures and for an order compelling the respondents to allocate them alternative plots before the process of demolition can commence.
3. The applicants contend that the marking of their structures for demolition was done in a discriminative manner and that if no injunction is granted, they will lose their property which is against their constitutional right to own property.
4. The applicants' application is opposed by the second respondent through a replying affidavit sworn on 19th October 2018. The replying affidavit has been sworn by the Project Manager of Korogocho slum upgrading project who has given the history of how the project was started. The project is being undertaken through partnership of Kenya and Italy under Kenya – Italy Debt for Development Programme (KIDDP) . The project is to improve the livelihood of the slum dwellers by providing roads, bridges, clinics and other basic facilities.
5. To ensure that the project went on smoothly the residents were fully involved through election of a resident committee. The residents were informed of what was being carried out and information was disseminated through public barazas. The land where the residents are residing on is Government land but the Government decided to recognize the residents occupation of the same and have proceeded to do a 7 kilometre tarmac road within the slum, a foot bridge connecting the residents with Dandora across Nairobi river and drainage system.
6. The third respondent contends that the applicants are only being malicious as they were consulted at every stage of the project and that the project is not only beneficial to the greater members of Korogocho but also the applicant's themselves. The third respondent contends that the applicants have not proved their claims and to grant an injunction will greatly hamper the efforts by the Government to improve the livelihood of the slum dwellers.
7. I have carefully considered the applicants' application as well as the opposition thereto by the third respondent. I have also considered the submissions filed by the applicants. The applicants are seeking an injunction. For an injunction to issue, the applicant have to demonstrate that they have a prima facie case with probability of success. An injunction is meant to preserve the subject matter of the suit until the suit is determined. In the instant case the applicants concede that indeed the project has gone on and roads have been tarmacked, street lights put in place, social halls constructed and there is already a dispensary which is operational. This admission is made in the applicants' submissions in the same submissions, the applicants state that they are not opposed to the project per se. Their only fear is that they may not benefit from the allocation of plots by the Government.
8. The applicants came to court on the basis that their structures had been marked for demolition. This was in 2015. Two years later that is 2017, they are conceding that the roads and other facilities have already been constructed. their fears that they will be short-changed in the

allocation is unfounded. They claim that new allocations may be given to outsiders at a fee. These are just fears which are not substantiated.

9. The applicants in their submissions are citing other cases which had been filed early on by other parties where injunctive reliefs were granted. They are using this in their submissions to persuade me to grant an injunction. Each case is decided on its own peculiar circumstances. The circumstances in this case do not warrant grant of an injunction be it temporary or mandatory as the applicants are seeking. I find that the applicants' application lacks merit. The same is hereby dismissed with no order as to costs.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 28th day of June 2018.

E.O.OBAGA

JUDGE

In the absence of parties who had been served with notice of delivery of

ruling.

Court Clerk: Hilda

E.O.OBAGA

JUDGE