



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KWALE**

**ELC CASE NO. 319 OF 2017**

**PHILOMENA MUAKI MUANGI.....PLAINTIFF/APPLICANT**

**-VERUS-**

**CDF COMMITTEE NYALI CONSTITUENCY**

**LAURAMAN INVESTMENTS LIMITED**

**LAND REGISTRAR MOMBASA.....DEFENDANT/RESPONDENTS**

**RULING**

1. For determination is the notice of motion dated 4.9.2017 seeking the following orders:

**a. Spent**

**b. Spent**

**c. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants and their agents be restrained from constructing, occupying and in any other manner dealing in Title Number MOMBASA/MWEMBELEGEZA/1581 pending the hearing and determination of this suit.**

**d) Costs of this application be provided for.**

2. The application is premised on the grounds set out on the face of the application inter-alia that the plaintiff is the registered owner of the suit property as per the copy of title deed annexed. That no authority or public entity has claimed the property or compulsorily acquire the same. Lastly that the plaintiff was not notified on the going constructions and that the plaintiff stands to suffer a lot of damages if the orders sought are declined.

3. The defendants were served and appearances were filed by the A. G and Ms Cootow & associates. However no documents were filed in opposition to the application. The Court is still under a duty to analyse and make a finding whether the application meets the set principles before granting injunctive reliefs.

4. The Applicant filed her submissions on 31.1.2018 while the A.G through Mr Ngari State Counsel filed his submissions on behalf of the 1<sup>st</sup> & 3<sup>rd</sup> Respondents on 15.2.2018. The Applicant has explained how she acquired the property by the annexures to the supporting affidavit. She also said that on 24.10.2005 a restriction was placed on her title claiming the same is a public utility. However she only learnt of this restriction mid last year when the construction on the plot was commenced. It is her contention that the registration of the restriction does not cancel her title.

5. I do agree with the Applicant that a restriction does not cancel a title however it creates an encumbrance on the same which cannot be wished away. From the documents annexed, the construction is for building of a police post. The works are being undertaken by the National Government through the Constituency Development Fund Nyali. The Applicant having shown that she is the registered owner of the property has indeed demonstrated that she has a prima facie case with a probability of succeeding.

6. However given the nature of the developments being undertaken and by whom, I must now consider the second limb of whether the damages to be suffered are irreparable in case the orders sought are not granted. The Applicant in her submissions has concede that the plot's value can be ascertained. But that her loss cannot be compensated on account of the kind of development she intended to carry out on the plot. She did not disclose her planned developments she intended to engage in. Further the plot in my view appears to be a plot for commercial development as the Applicant states she has been paying rates. It is unfair that she was not notified before the construction

commenced or that the process of compulsory acquisition was not kicked off. It is not however too late to ascertain the value of the plot and compensate the plaintiff if she proves her case. For this reason, it is my finding that the loss if at all to be suffered is not irreparable as the same can be compensated by way of damages.

7. In conclusion, I reach a decision that the interest of justice require in the circumstances of this case that the orders sought be declined. The Applicant have alternative remedies other than the injunctive reliefs sought. Each party shall bear their respective costs of the application.

**Dated, signed & delivered at Mombasa this 26<sup>th</sup> June 2018**

**A. OMOLLO**

**JUDGE**