



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI LAW COURTS

ELC NO. 986 OF 2015

BENSON ONGOTO ODOT.....1ST PLAINTIFF

JOSEPHINE ACHIENG AKOTH.....2ND PLAINTIFF

VERSUS

KANYUKU WANJAU.....DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 23rd January 2018 in which the plaintiffs/applicants seek the following orders:

1. That for reasons to be recorded the Honourable court be pleased to certify this application as urgent, and orders that service of the same be dispensed with in the first instance.

2. That the Honourable Court do issue an order demolishing the perimeter fence erected on the suit property subsequent to the court order of the 6th of November, 2017 and further do affirm the orders restraining any further construction until the matter is heard and determined.

3. That consequent to the grant of the Order in (2) above the said demolition be undertaken under the supervision of the Officer Commanding Station Buruburu Police Station for the preservation and protection of Public Order.

4. That further consequent to the orders issued on the 6th of November, 2017 the court do grant such orders as may be necessary and appropriate to safeguard the suit property and prevents its wastage, damage, alienation or disposition pending trial and direct that all orders or preservation as issued herein be appended on the suit property to prevent any further violation of this Honourable Court's Order

5. That the costs of the application be provided for.

2. This court had granted an order of status quo maintaining the suit property until the dispute herein is heard and determined. This order was given on 6th November 2017. The parties were directed to ensure that the suit is heard so that issues in contention are resolved. Both the plaintiffs and the defendant are claiming the same property. Instead of having the dispute determined the applicants have come to court seeking demolition of a temporary iron sheet which has been erected around the suit property.

3. The applicants contend that they made a random visit to the suit property and found that the respondent had put up a fence round the suit property contrary to the orders of court. The applicants do not say when the fence was put up.

4. In the replying affidavit by the respondent, the respondent denies any contravention of the orders of the court. He states that the temporary fence was meant to protect the property from vandalism and the risk of children falling into the water filled foundation of the building he had started putting up. He states that he stopped further construction following the court order.

5. I have considered the applicants' application and the opposition to the same by the respondent. This is one of the applications which are brought for the sole purpose of delaying cases. There is no allegation that the respondent is continuing with the construction. Even if the iron sheet fence was put after the court order, its erection is justified. It is meant to safeguard the suit property from vandalism and from any dangers of children falling into the water logged foundation which the respondent had started. The action by the respondent does not amount to breach of the status quo order. I find no merit in the applicants' application which is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, and signed at *Nairobi* on this 31st day of July 2018.

E.O.OBAGA

JUDGE

Delivered in the presence of;-

Mr Kirimi for Mr Makori for the Applicants

None appearance for the Respondent

Court Assistant: Hilda

B.M.EBOSO

JUDGE

31/7/2018