



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. SUIT NO. 145 OF 2018

FLORENCE GATAVI NJERU.....PLAINTIFF

VERSUS

NAIROBI CITY COUNTY.....1ST DEFENDANT

THE HON. ATTORNEY GENERAL.....2ND DEFENDANT

WORLD BANK.....3RD DEFENDANT

EARTH CONSTRUCTION LIMITED.....4TH DEFENDANT

RULING

In the Amended Notice of Motion dated 11/5/2018, the Plaintiff seeks an order to restrain the Defendants or their agents from trespassing, re-entering, demolishing, building, removing materials, constructing or in any manner interfering with the parcel land known as plot no. C61, Kariobangi South/KCC Village (“the Suit Property”). The application seeks to have the order enforced by the Officer in Charge of Kariobangi Police Station.

The Plaintiff claims that she is the owner of the Suit Property having been allotted the land in 2002. She claims she was issued a beacon certificate as she awaits the processing of her title over the Suit Property. She took possession of the Suit Property and proceeded to construct a 3 storeyed building on the Suit Property after obtaining the necessary approvals and consents for development of the property. She claims that the 1st Defendant trespassed on the Suit Property and demolished her 3 storeyed building. She claims that she recently learned that the Ministry of Transport, Infrastructure, Housing and Urban Development entered into a contract with the 3rd Defendant to construct the Kagundo Road Fire Station on the Suit Property. The construction will be undertaken by the 4th Defendant who has commenced work. The Suit Property has been fenced and the Defendant has placed a notice board on the Suit Property. She claims that the Defendant did not conduct due diligence which would have confirmed that she was the owner and in possession. The Plaintiff claims that she will suffer loss, prejudiced and irreparable damage if the construction of the fire station is allowed to proceed.

The 1st Defendant opposed the application and relied on the grounds of opposition filed in court on 11/5/2018. The 1st Defendant argues that the suit is incompetent and that the transaction which led to the Plaintiff’s acquisition of the suit land was corruptly and fraudulently undertaken. The 1st Defendant accuses the Plaintiff of colluding with its officers to make payment for property which was not available for allocation, obtaining certificate of beacons and receipt payments through corruption as well as illegally trying to acquire land belonging to the 1st Defendant. The Defendant avers that the Plaintiff was negligent when she built on property which did not belong to her and failing to undertake due diligence.

Parties made oral submissions. The Plaintiff relied on the photographs of the building before it was demolished and the photographs taken after it had been demolished. She also produced the building plans which were approved by the 1st Defendant. The beacon certificate issued by the 1st Defendant in October 2005 states that the Plaintiff had been shown beacons defining the plot boundaries in October 2005. No explanation was given as to why no title was processed up to date and issued to the Plaintiff. The Plaintiff also annexed a copy to the letter dated 24/11/2015 issued by the National Construction Authority vide which the Plaintiff was required to make some payments. She also annexed copies of receipts issued by the 1st Defendant on account of infrastructure fees, occupation certificate fee and payment for the board to be placed at the site. She annexed a copy of the letter dated 9/5/2018 addressed to the Attorney General giving notice of intention to sue. The plaint was filed on 28/3/2018. The Plaintiff maintains that she was served with any notice before her building was demolished and that the Defendant has never disputed that the Suit Property belongs to her. After the demolition of her structure, the Defendants have brought heavy equipment to the land put up a bill board showing that they want to put up a fire station to serve the area.

The Defendant argues that the Plaintiff acquired the Suit Property illegally and that she ought that it was earmarked for the building of a fire station. The Defendant maintains that the Plaintiff’s best recourse is to pursue compensation since the defendant is capable of raising the compensation sum the court may award. The Defendant also argues that the suit is barred in law since no notice was given to the 2nd

Defendant as required by Section 13 of the Government's Proceedings Act.

The Plaintiff maintains that she was seeking a declaration that the Suit Property belongs to her as well as compensation. The Plaintiff relied on the case of *Kenya Bus Service Limited and Another v. Minister for Transport and 2 others [2012] eKLR*. The court stated in that case that Section 13 A of the Government Proceedings Act violated Article 48 of the Constitution.

The question the court needs to answer is whether the orders sought by the Plaintiff should be granted against the background of these facts.

The court is not satisfied that the orders ought to issue since the Plaintiff confirmed that the structures on the Suit property were demolished. It will serve no useful purpose to grant the orders sought. The application is dismissed. Costs in the cause

Dated and delivered at Nairobi on 26th July 2018.

K. BOR

JUDGE

In the presence of: -

Ms. Mutua holding brief for Mr. Waiganjo for the Plaintiff

Ms. Nyaanga holding brief for Mr. Nyaberi for the Defendant

Mr. V. Owuor- Court Assistant