



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO 157 OF 2017

HARUN OSORO NYAMBOKI.....PLAINTIFF

=VERSUS=

KENELEC SUPPLIES LIMITED.....1ST DEFENDANT

COUNTY GOVERNMENT OF NAIROBI.....2ND DEFENDANT

NATIONAL LAND COMMISSION.....3RD DEFENDANT

THE LAND REGISTRAR, NAIROBI.....4TH DEFENDANT

DIRECTOR OF SURVEYS.....5TH DEFENDANT

PERMANENT SECRETARY, MINISTRY OF LANDS,

HOUSING AND URBAN DEVELOPMENT.....6TH DEFENDANT

THE HON ATTORNEY GENERAL.....7TH DEFENDANT

RULING

1. On 9/3/2017, the plaintiff, Harun Osoro Nyamboki, brought a Notice of Motion of even date seeking an interim injunctive order restraining the 1st defendant against annexing, developing or dealing in any manner whatsoever with a service lane, measuring about six metres and serving LR No 209/13557, situated along Langata Road, Nairobi West, pending the hearing and determination of this suit. The application is supported by the plaintiff's affidavit sworn on even date. The 1st defendant opposes the application through a replying affidavit sworn on 12/6/2017 by its director, Mr Joseph Claudio. The 4th - 7th defendants oppose the application through Grounds of Opposition dated 11/4/2017. The 2nd and 3rd defendants did not file replying affidavits to the application. The application is the subject of this ruling.

2. The case of the plaintiff/applicant is that he owns Land Reference Number 209/13557 (the **suit Property**) having purchased it in April 1997. He has fully developed the suit property upon approvals from relevant bodies, including the physical planning regulators. The suit property is served by a six metre service lane which the 1st defendant has, in collusion with players from the 2nd, 3rd, 4th, 5th and 6th defendants' offices, grabbed. He further contends that the respondents have caused the original survey plan of the 1st defendant's property to be revised to legitimize the said grabbing. He contends that the purported acquisition of the public service lane was unprocedural and illegal. He adds that his property, which is fully developed and occupied, is served by the public service lane. He contends that development of the service lane by the 1st defendant would interfere with the water and sewer lines serving his property. Consequently, he seeks the interim order pending the hearing and determination of this suit.

3. The case of the 1st defendant is that it is the registered proprietor of Land Reference Number 209/18289 having surrendered the Title to Land Reference Number 209/10191 over a decade ago. In June 2002, it applied to the Commissioner of Lands for an extension of LR No. 209/10191 by six metres and his application was approved by the Commissioner of Lands. New Deed Plan and Title were subsequently issued to it as conclusive evidence of ownership. It contends that its acquisition of the six metres was procedural and legitimate.

4. The 1st defendant further contends that the plaintiff's contention that the only access to his property is the six metres now forming part of the 1st defendant's property is misleading and deceitful because the cadastral map and the deed plan annexed to the title are clear that there are other access points marked "road". Lastly, the 1st defendant contends that this court has no jurisdiction to entertain the plaintiff's claim because disputes relating to boundaries of registered land are to be dealt with under Section 18 of the Land Registration Act.

5. The 4th to 7th defendants oppose the application on the grounds that the plaintiff's suit is statute-barred under the Limitation of Actions Act; the plaintiff has not presented evidence to show that public land has been grabbed; and that the plaintiff's own title is disputed as having been obtained from a public parking bay.

6. The application was canvassed through written submissions. The 1st defendant too filed written submissions in response. The 2nd - 7th defendants did not file written submissions.

7. The court has carefully considered the application, rival affidavits, grounds of opposition, and the relevant law on the key issue falling for determination. The key issue falling for determination in this application is whether the plaintiff/applicant has satisfied the criteria for grant of an interlocutory injunction as spelt out in **Giella v Cassman Brown (1973) EA 358**. In summary, the applicant was required to demonstrate a prima facie case with a probability of success. Further, he was required to demonstrate that he stands to suffer irreparable damage that cannot be remedied through an award of damages if the injunctive order is not granted. Lastly, if the court were to be in doubt, the application is to be determined on a balance of convenience.

8. I have carefully examined the documents exhibited by the plaintiff with a view to satisfying myself that the plaintiff has a prima facie case with a probability of success. The 1st defendant holds title to the contested six metres. The key reason why the plaintiff seeks a restraining order against the defendant is that he holds a registered title to LR No 209/13557 which is served by the six metre lane. The first and key document exhibited by the plaintiff in support of the application for an injunctive order is a supposed grant in which LR No 209/13557 is comprised. However, the supposed grant does not bear a grant number; it does not bear the signature of the Commissioner of Lands and it does not bear the attestation/witnessing signature of the Registrar of Titles. Lastly, it does not bear the title registration entry number. In summary, the supposed grant, marked as exhibit "HON1", cannot qualify to be described as a registered title.

9. In the absence of evidence of the plaintiff's registered title to the suit property which is alleged to be served by the alleged public service lane, the plaintiff's claim that he is the registered proprietor of LR No 209/13557 is not supported by evidence. I do not therefore think the plaintiff's application discloses a prima facie case to warrant the issuance of a restraining order against the 1st defendant who holds title to the six metre lane. Having come to that finding, it would be moot to consider the other limbs of **Giella v Cassman Brown (1973) EA 358**.

10. The net result is that the Notice of Motion dated 9/3/2017 is dismissed for lack of merit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 16TH DAY OF JULY 2018.

B M EBOSO

JUDGE

In the presence of:-

Mr Kamau Advocate for the 4th – 7th defendants

Ms Mburu Advocate for the 1st defendant

Ms Halima Abdi - Court Clerk