



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

E.L.C. CASE NO. 410 OF 2017

GEORGE GATIBA NJENGA.....PLAINTIFF

VERSUS

NAIROBI CITY COUNTY.....1ST DEFENDANT

NATIONAL CONSTRUCTION AUTHORITY.....2ND DEFENDANT

RULING

The Plaintiff seeks to restrain the Defendants from demolishing, alienating, wasting, collapsing or in any manner interfering with L.R. No. Nairobi/ Block 113/13 (“the Suit Property”) following the Enforcement Notice issued by the 1st Defendant. The Plaintiff claims that it partially complied with the Enforcement Notice and removed tenants from the Suit Property but is apprehensive that the Defendants may demolish its building on the Suit Property.

The Plaintiff attached a copy of the certificate of lease issued to him which is currently charged to Equity Bank as security for the loan of Kshs. 3.2 Million and a further loan of Kshs. 12 Million. In the supporting affidavit, he deponed that he had erected an 8 storey residential building containing 14 single dwelling units on every floor from which he derives monthly rental income of Kshs. 400,000/= which he uses to service his loan. The Suit Property was valued at Kshs. 40 Million in 2014. The enforcement notice which the Plaintiff produced is not legible. What the court can make of it is that it seems to have directed that the suit premises should be vacated immediately and the structure was to be removed.

The 2nd Defendant is tasked to oversee the construction industry and ensure quality assurance in the industry. The 2nd Defendant urged that in light of the increased incidences of collapse of unapproved structures in Nairobi, it became prudent for the regulatory authorities to err on the side of caution to avoid loss of lives when buildings collapse. The 2nd Defendant averred that a 7-storey building collapsed in Pipeline area in Embakasi on 13/6/2017 killing 2 people which prompted the multi-sectoral agency team to work together within Nairobi to set standards and regulate the building industry to check the viability of existing structures and their safety; and recommend appropriate action. The 2nd Defendant maintained that it was wrongly joined to this suit.

The 1st Defendant filed Grounds of Opposition urging that the Plaintiff had conceded that he erected the structure on the Suit Property against the by-laws for Nairobi City and that the structure as it stands is risky to human life. The Defendant urged the court to consider public safety which outweighs the Plaintiff’s economic interests and dismiss the application.

The Plaintiff filed what is entitled an “Affidavit in Reply to the Replying Affidavit” exhibiting correspondence exchanged on the structural integrity tests that were to be carried out on the Suit Property to ascertain its safety.

There is no conclusive report on the safety of the 8-storey structure erected on the Suit Property. The Plaintiff has not shown that it sought and obtained the necessary building approvals before carrying out the development on the Suit Property.

Section 30 of the Physical Planning Act prohibits the carrying out of development without being granted development permission by the local authority, which in this case would be the 1st Defendant. Section 38 of this Act empowers the 1st Defendant to serve an enforcement notice where it comes to its notice that the development of land has been carried out without the required development permission. On being served with an enforcement notice, a party aggrieved may appeal to the 1st Defendant’s Liaison Committee under the Act. The Plaintiff ought to have pursued the remedies provided under the Physical Planning Act when it was served with the enforcement notice.

The court agrees with the Defendant that it is imperative to protect and ensure public safety and guard against the loss of life and declines to restrain the Defendants from demolishing the Plaintiff’s structure on the Suit Property. The application dated 19/6/2017 is dismissed with

costs to the Defendants.

Dated and delivered at Nairobi this 30th day of August 2018.

K. BOR

JUDGE

In the presence of: -

Ms. Nakhungu for the Plaintiff

Ms. Nakili holding brief for Mr. Morara for the 2nd Defendant

No appearance for the 1st Defendant

Mr. V. Owuor- Court Assistant