



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO 6 OF 2017

MAHAMAD RAJAB BASHIR.....PLAINTIFF/APPLICANT

=VERSUS=

KHADHJA IBRAHIM DOKA.....1ST DEFENDANT/RESPONDENT

YUSUF AHMED.....2ND DEFENDANT/RESPONDENT

ZAKIA ISSA SENUSI.....3RD DEFENDANT/RESPONDENT

RULING

1. This is the Notice of Motion dated 3rd January 2017. It is brought under Order 51 Rule 1 of the Civil Procedure Rules, Section 1A, 3, 3A and 63(e) of the Civil Procedure Act, Cap 21 laws of Kenya and Article 159 of the Constitution of Kenya, 2010 and all enabling provisions of the law.

2. It seeks orders:-

(1) Spent

(2) Spent

(3) That there be a temporary injunction restraining the respondents by themselves, their agents, employees, servants or any other person(s) claiming and or acting through them from entering, building, constructing, alienating and or interfering in any manner however and whatsoever with parcel of land Plot No. 82 Kibera – Makina area-Nairobi within Nairobi County until the hearing and determination of this instant application.

(4) That the costs of this application be borne by the respondent.

3. The grounds are on the face of the application and are listed as in paragraph 1 to 9.

4. The application is supported by the affidavit of Mahamad Rajab Bashir, the plaintiff/applicant herein sworn on the 3rd January 2017.

5. The defendants/respondents were duly served with pleadings and the application. The affidavit of service is duly filed. They neglected to enter appearance and/or file defence or responses to this application. The application therefore stands unopposed.

6. It is the plaintiff's/applicant's case that he is the son of the late Rajab Bashir Majan. He was granted Letters of Administration Ad Litem from the High Court of Kenya at Nairobi on 22nd December 2016.

7. That the deceased Rajab Bashir Majan was allocated parcel of land Plot No. 82 Kibera Makina area on or about 1934 by the British Colonial Administration by virtue of being an ex-Sudanese soldier from the Nubian Community. Since the allotment the plaintiff has not been issued with title documents. The entire Kibera area has no title documents.

8. Further that sometimes in December 2016, the respondents without any colour of right nor permission, consent and or authority entered into the plaintiff's parcel of land and occupied ¼ an acre. They started constructing and building permanent illegal, unlawful and unauthorized premises.

9. It is his further submission that his parcel of land is distinct and separate from the other parcels of land. He says the respondents' actions are a nuisance. He prays that the application be allowed.

10. As is stated earlier the application is not opposed. The plaintiff/applicant is the legal representative of the estate of Rajab Bashir Mojan. I find that he has capacity to bring the suit on behalf of the estate of the deceased.

11. I find merit in this application and grant the orders sought namely:-

(a) That a temporary injunction be and is hereby issued restraining the respondents by themselves, their agents, employees, servants or any other person(s) claiming and/or acting through them from entering, building, constructing, alienating and/or interfering in any manner whatsoever with parcel of Land Plot No. 82 Kibera-Makina area –Nairobi within Nairobi County pending the hearing and determination of this suit.

(b) The costs of this application be borne by the respondents.

It is so ordered.

Dated, signed and delivered in Nairobi on this 31ST day of OCTOBER 2018

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L. KOMINGOI

JUDGE