



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC 1434 OF 2014

NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY (NEMA)PLAINTIFF

-VERSUS=

RUMBA KINUTHIA.....DEFENDANT

WATER RESOURCES MANAGEMENT AUTHORITY KIAMBU.....INTERESTED PARTY

CONSOLIDATED WITH

PETITION NO.559 OF 2014

RUMBA KINUTHIA.....PETITIONER

NATIONAL ENVIRONMENTAL AUTHORITY (NEMA).....1ST RESPONDENT

THE COUNTY GOVERNMENT OF KIAMBU.....2ND RESPONDENT

HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT

THE CHIEF MAGISTRATE’S COURT KIBERA.....4TH RESPONDENT

WATER SOURCES MANAGEMENT AUTHORITY KIAMBU.....5TH RESPONDENT

RULING

1. When this case came up for hearing on 27th September 2018, Mr Rumba Kinuthia an advocate who is the defendant in ELC 1434 of 2014 and petitioner in petition No.559 of 2014 submitted that there was nothing to be canvassed in the hearing of ELC 1434 OF 2014 as the plaintiff’s notice of motion dated 12th November 2014 which sought similar prayers as in the plaint had been dismissed on 10th April 2018 and as such there was nothing remaining to proceed to hearing.

2. Mr Rumba Kinuthia’s submissions and or position was opposed by Mr Gitonga for the plaintiff in ELC 1434 of 2014 and Mr Ochieng for the 5th Respondent in Petition No.559 of 2014. On his part, Mr Gitonga argued that though the application dated 12th November 2014 had been dismissed, ELC 1434 of 2014 is still pending and should proceed. Mr Ochieng on his part argued that ELC No1434 of 2014and petition No.559of 2014 had been consolidated and that there is no way the two can be separated.

3. I have gone through the proceedings herein as well as the pleadings filed in this matter. ELC No.1434 of 2014 was filed on 12th November 2014 seeking the following reliefs:-

a. This Court to issue an Environmental Restoration Order immediately stopping the defendant through himself, agents, employees or servants from harming the environment by way of backfilling, depositing soil, or debris, constructing on the riparian reserve of river Kiu and

b. This Court to issue Environmental Restoration Order requiring the defendant through himself, agents, employees or servants within 14 days , restore the riparian reserve of river Kiu to its original status devoid of the soil and debris deposits

made thereon failure to which the plaintiff be at liberty to restore and recover the expense of so doing from the defendant as a civil debt recoverable summarily, and

c. A permanent injunction restraining the defendant through himself, agents, employees or servants from backfilling, depositing soil, or debris, constructing on the riparian reserve of river Kiu

d. The plaintiff be at liberty to inspect for compliance and apply accordingly.

e. Costs of this suit and interest.

4. The Plaintiff in ELC 1434 of 2014 also filed a notice of motion on the same day i.e 12th November 2014 in which it sought the following orders:-

1. That this application be heard ex-parte at the instance due to its inherent urgency.

2. That pending the hearing interpartes of this application, this court be pleased to issue an Environmental Restoration Order immediately stopping the defendant through himself, agents, employees or servants from harming the environment by way of backfilling, depositing soil, or debris, or constructing on the riparian reserve of river Kiu which is along Kamiti road in Kiambu county, and

3. That pending the hearing and determination of this suit, this court be pleased to issue an Environmental Restoration Order immediately stopping the defendant through himself, agents, employees or servants from harming the environment by way of backfilling, depositing soil, or debris, or constructing on the riparian reserve of river Kiu which is along Kamiti road in Kiambu county, and

4. That this court do issue an Environmental Restoration Order requiring the defendant through himself, agents, employees or servants to within 14 days , restore the riparian reserve of river Kiu to its original status devoid of the soil and debris deposits made thereon failure to which the plaintiff be at liberty to restore and recover the expense of so doing from the defendant as a civil debt recoverable summarily, and

5. That the Officer Commanding Kiamumbi Police Station do provide security for enforcement of the orders that this Court would issue.

6. Costs be provided for.

5. On 21st January 2015, Justice Onguto who is now deceased directed that ELC 1434 of 2014 and petition No.559 of 2014 be heard together but ELC No.1434 of 2014 be used as the main file. The Judge had on 19th December 2014 advised parties to go for the main hearing a view which the advocates agreed with. The interlocutory applications were put on hold in preference for main hearing.

6. On 14th February 2018, the plaintiff in ELC 1434 of 2014 filed a certificate of urgency in which its counsel asked that the notice of motion dated 12th November 2014 be heard. I directed that the certificate together with the accompanying affidavit be served for hearing of notice of motion dated 12th November 2014. I gave 10th April 2018, as the date for hearing. On 10th April 2018, the Notice of Motion dated 12th November 2014 was dismissed for non-attendance.

7. I have considered the submissions by Mr Rumba Kinuthia as well as the submissions by Mr Gitonga and Mr Ochieng. It is clear that the application dated 12th November 2014 was an application seeking interlocutory reliefs pending the hearing of the main suit. Its dismissal did not mean that the entire suit had been dealt with. I have enumerated the reliefs sought in both the dismissed application and the suit itself in paragraphs 3 and 4 hereinabove. It is clear that the suit in ELC 1434 of 2014 is still pending. I therefore dismiss Mr Rumba Kinuthia's arguments with costs to the plaintiff in ELC 1434 of 2014 and the 5th Respondent in petition No.559 of 2014. As Mr Rumba Kinuthia is the one who caused the adjournment of the hearing scheduled on 27th September 2018, he is hereby condemned to pay court adjournment fees of Kshs.1000/= payable before the next hearing date.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 26th day of November, 2018

E.O.OBAGA

JUDGE

In the presence of:-

Mr Kabaiku for Mr Kinyua for Defendant

M/s Njagi for Mr Ochieng for 5th Defendant/Respondent

Court Assistant : Hilda

E.O. OBAGA

JUDGE