



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO 991 OF 2013

JOSEPH KIIRU MUGAMBI.....1ST PLAINTIFF/APPLICANT

ANNE WANGECI ITINGA.....2ND PLAINTIFF/APPLICANT

=VERSUS=

ANN WAMBUI KARIUKI.....1ST DEFENDANT/RESPONDENT

PETER NDUMIA.....2ND DEFENDANT/RESPONDENT

NAIROBI CITY COUNTY.....3RD DEFENDANT/RESPONDENT

RULING

1. This is the notice of motion dated 12th August 2013. It is brought under Order 40 rule 2(1) and 2(3) of the Civil Procedure Rules. Section 3 and 3A of the Civil Procedure Act and all other enabling provisions of the law.

2. It seeks order:-

(1) Spent

(2) Spent

(3) That the 1st and 2nd defendants/respondents and/or their agents be restrained by a temporary injunction from alienating, occupying, erecting any fence or structure, leasing or letting and or developing the parcel known as Plot Numbers 10 and 11 Komarock Community Shopping Center within Komarock Estate pending the hearing and determination of this suit.

(4) That the Officer Commanding Kayole Police division do supervise the order.

(5) That the cost of this application be provided for.

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

4. The application is supported by the affidavit of Joseph Kiiru Mugambi, the 1st plaintiff/applicant sworn on the 12th August 2013.

5. The 1st and 2nd defendants/respondents who were duly served by way of substituted service neglected to enter appearance and/or file defence and /or file any responses.

6. The 3rd defendant/respondent entered appearance and filed a statement of defence dated 21st August 2013. No response to the notice of motion dated 12th August 2013 was filed on behalf of the 3rd respondent.

7. On the 10th March 2014 the court directed that the application be canvassed by way of written submissions.

8. It is the plaintiff's/applicant's case that they purchased the two suit plots from the original allottees Caroline Irungu and Silvester Abura.

They were also issued with Power of Attorney from the original allottees. The 1st and 2nd defendants/respondents have embarked on fencing and digging trenches in preparation for building. They stand to suffer great loss and damage if these orders are not granted.

9. I have considered the notice of motion, the affidavit in support and the annexures. I have also considered the written submissions of counsel. The issue for determination are:-

(i) Whether the plaintiff/applicant's application meets the threshold of grant of temporary injunctions.

(ii) Who should bear costs?

10. At this juncture it is necessary to briefly examine the legal principles governing the application of this nature. In an application for injunction the onus is on the applicant to satisfy the court that it should grant the injunction. The principles were set out in the precedent setting case of **Giella vs Cassman Brown and Company Limited [1973] EA 358.**

11. In the case of **Mrao Limited vs First American Bank of Kenya Limited [2003] KLR 125.** The Court of Appeal stated what amounts to a prima facie case. I am guided by the above authorities.

12. The plaintiffs'/applicants' case has not been controverted by the 1st and 2nd defendants/respondents. The plaintiffs/applicants have annexed to the application; copies of allotment letters and agreements, receipts of payments of rates and other statutory charges, receipts for payment to the 3rd defendant by the plaintiffs/applicants and a list of registered allottees among other documents.

I am satisfied that they bought the plots from the original allottees.

13. I find that they have demonstrated a prima facie case with a probability of success at the trial. The 1st and 2nd defendants/respondents on the other hand never came to court to demonstrate their claim to the suit plots.

14. I also find that the plaintiffs/applicants will suffer irreparably if these orders are not granted. They risk losing their plots if the defendants/respondents are allowed to go on with construction.

15. In conclusion, I find merit in this application and grant the orders sought namely:

(a) That a temporary injunction be and is hereby issued restraining the 1st and 2nd defendants/respondents and/or their agents from alienating, occupying, erecting any fence or structure, leasing or letting and or developing the parcels known as plot numbers 10 and 11 Komarock Community Shopping Center within Komarock Estate pending the hearing and determination of this suit.

(b) That the officer commanding Kayole Police Division do provide assistance in the enforcement of the above orders.

(c) That costs of this application do abide the outcome of the main suit.

It is so ordered.

Dated, signed and delivered in Nairobi on this 6TH day of NOVEMBER 2018

.....

L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the 1st & 2nd Plaintiff

.....Advocate for the 1st & 2nd Defendants

.....Advocate for the 3rd defendant

.....Court Assistant