



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
ELC CIVIL CASE NO 1543 OF 2014

1. JOSEPH MACHARIA
2. JOSEPH KAMAU NJOROGI
3. DAVID NGUTHO BENSON
4. GEORGE WAWERU WAKONYO
5. MARY WAIRIMU MUIRU
6. JANE WAMBUI IHIGA
7. PATRICK KAMAU
8. MARGARET WAMBUI MWANGI
9. ALI MUKASA KASULE
10. JOHN NJUGUNA MBUGUA
11. FRANCIS THUO MUHINJA
12. MARGARET WANJIRU MUIRU.....PLAINTIFFS/APPLICANTS

VERSUS

NAIROBI CITY COUNTY GOVERNMENT.....DEFENDANT/RESPONDENT

RULING

1. This is the Amended Notice of Motion dated 19th September 2018 brought under Order 40 Rules 1A and 2 of the Civil Procedure Rules, Section 1A, 3, 3A, 63(e) and 89 of the Civil Procedure Act and all other enabling provisions of the law.

2. It seeks orders:-

(1) Spent

(2) Spent

(3) *That pending the hearing of the substantive suit, and injunction be confirmed restraining the defendant by itself, its servants, agents, employees, officials or any party claiming title under it from continuing to erect a perimeter wall over land parcel know as Block 86 Dandora Area IV, continuing to dump garbage in the area claimed by the plaintiff herein, or in any other manner utilizing the suit property for incineration, power co-generation or power generation or alienating the suit parcel of land or interfering in whatsoever manner, with the present sub-stratum of the suit property.*

(4) *That this honourable court be pleased to make such other or further orders or directions as may be deemed just and*

expedient in the interest of justice.

(5) That costs of the application be provided for.

3. The grounds are on the face of the application and set out in paragraph 1 to 17.
4. The application is supported by the affidavit of Joseph Macharia Maina the 1st plaintiff/applicant sworn on the 24th September 2018.
5. The defendant/respondent's advocate M/s Kithi & Company Advocates were duly served with the Amended Notice of Motion and the hearing notice for 22nd November 2018. The affidavit of service sworn by Mary O. G. Njue is duly filed.
6. The plaintiffs'/applicants' had earlier filed another notice of motion dated 15th December 2014 which has never been prosecuted.
7. It is the plaintiffs'/applicants case that they have occupied the suit parcel of land since 1976. That they have petitioned the government to settle them on the suit parcel of land, the government recognized them as lawful squatters within Kinyago area of Dandora. Further that successive governments have recognized them as being entitled to be resettled on the suit parcel of land.
8. The plaintiffs'/applicants also allege that the defendant/respondent has formally announced plans to convert the use of the suit land into an energy utility or power co-generation or other waste disposal facility with effect from 1st August 2018. They are apprehensive that unless stopped the defendant/respondent will alienate the suit parcel of land and deny them the legitimate expectation to be settled on the suit parcel of land. They urge that the application be allowed.
9. I have considered the Amended Notice of Motion, the affidavit in support and the annexures. I have considered the oral submissions of counsel and the relevant provisions of law. The issues for determination are:-

(i) Whether the plaintiffs'/applicants' application meets the threshold for grant of temporary injunctions.

(ii) Who should bear costs?

10. At this juncture, it is necessary to briefly examine the legal principles governing the applications of this nature. In an application for interlocutory injunction the onus is on the applicant to satisfy the court that it should grant an injunction. The principles were set out in the precedent setting case of **Giella vs Cassman Brown & Co. Ltd [1973] EA 358. In the Case of Mrao Limited vs First American Bank Kenya Limited and 2 Others [2003] KLR 125**, the Court of Appeal in determining what amounts to a prima facie case state:-

“A prima facie case in a civil application includes but is not confined to a ‘genuine and arguable’ case. It is a case which on the material presented to the court a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.

11. I have given due consideration to the grounds relied upon by the plaintiffs'/applicants. I find that their allegations that successive governments have recognized them as lawful squatters on the suit property cannot confer them a right over the same. It is my humble view that they lack the locus standi to pray for the orders sought as they are not the proprietors of the suit land.
12. In the case of **Njenga vs Njenga (1991) KLR 401 Bosire J** (as he then was) held that :-

“an injunction being a discretionary remedy is granted on the basis of evidence and sound legal principles”.

I am not persuaded by the facts presented by the plaintiffs'/applicants that they deserve the orders sought.

13. In the case of **Kenleb Cons Ltd V New Gatitu Service Station Ltd & Another 1990 KLR 557 Bosire J as he then was** held that:-

“to succeed in an application for injunction an applicant must not only make a frank and full disclosure of all relevant facts to the just determination of the application but must also show that he has a right, legal or equitable, which requires protection by injunction.”

14. I am not satisfied that the plaintiffs'/applicants deserve this kind of protection. I find that they have failed to establish a prima facie case with a probability of success at the trial.
15. I also find that the plaintiffs'/applicants have failed to demonstrate that they will suffer irreparable harm that cannot be compensated by an award of damages if these orders are not granted. They have not demonstrated that they cannot be resettled in any other parcel of land or the lack of any alternative parcel of land. I am guided by the case of **Ooko vs Barclays Bank of Kenya Limited [2002] KLR 394**.
16. All in all I find that the plaintiffs'/applicants have not made out a good case for grant of the orders sought. I find no merit in this application and the same is dismissed. The costs of the application do abide the outcome of the main suit.

It is so ordered.

Dated, signed and delivered in Nairobi on this 19TH day of DECEMBER 2018.

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiffs

.....Advocate for the Defendant

.....Court Assistant