



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT NAIROBI**

**ELC SUIT NO. 492 OF 2017**

**VISION PEOPLES IN MISSION LIMITED..... 1<sup>ST</sup> PLAINTIFF**

**VISION MISSIONARY CHURCH.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**THE MINISTRY OF LANDS, HOUSING**

**& URBAN DEVELOPMENT.....1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION.....2<sup>ND</sup> DEFENDANT**

**THE KOROGOCHO SLUM UPGRADING**

**PROGRAMME.....3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL.....4<sup>TH</sup> DEFENDANT**

**RULING**

The Plaintiff brought this suit against the defendants on 27<sup>th</sup> July, 2017 seeking the following reliefs:

- (a) The sum of Kshs.4,711,900/= being the cost incurred due to demolitions and other losses occasioned to the plaintiffs due to actions of the defendants.
- (b) Interest on (a) above at the current market rate with effect from 28<sup>th</sup> August, 2009 until payment in full.
- (c) Costs of the suit together with interest thereon at court rates.

In their plaint dated 21<sup>st</sup> July, 2017 the plaintiffs averred that at all material times the 1<sup>st</sup> plaintiff was the registered owner of all that parcel of land known as L.R No. 27070 (Grant No. 966133), Korogocho, Nairobi (hereinafter referred to as “the suit property”). The plaintiffs averred that the 1<sup>st</sup> plaintiff was at material times running on the suit property a school known as Haven Primary School, a Medical Centre, Women Vocational Training Centre and a feeding programme for poor children in Korogocho. The plaintiffs averred that sometimes in 2009, they learnt of plans to expand Korogocho Road. The plaintiffs averred that soon thereafter, some markings were made on their gate and church building which created the impression that the same would be affected by the planned road expansion. The plaintiffs averred that sensing possible demolition of their structures they approached the 1<sup>st</sup> defendant through their (the plaintiffs’) advocate for compensation which did not come forth. The plaintiffs averred that later in the year 2010, the defendants demolished their gate, wall and church building to give way for the said road expansion.

The plaintiffs averred that as a result of the said road expansion project, they lost two (2) parcels of land which belonged to the 2<sup>nd</sup> plaintiff known as Land Parcel Reference Numbers G.C 187 and G.C 422 Gitathuru, Korogocho. The plaintiffs averred that their complaints concerning the loss of the said plots and an appeal for compensation were not attended to by the defendants. The Plaintiffs averred that sometimes in October, 2013, the 1<sup>st</sup> defendant gave them an option of moving to a bigger parcel of land and in that regard, they were requested to surrender their title for the suit property to the 3<sup>rd</sup> defendant in exchange with a new title for the bigger plot that was to be issued after survey was completed. The Plaintiffs averred that they were to surrender their land which measured 0.0608 ha. and were to be issued with a title for a new parcel of land which was to measure 0.0865 ha. The plaintiffs averred that on 15<sup>th</sup> August, 2015 they registered a complaint regarding further destruction of their church building following which complaint the 1<sup>st</sup> defendant promised them that the 2<sup>nd</sup>

plaintiff's two (2) plots which they had lost would be given back to them. The plaintiffs averred that this promise was not acted upon.

The plaintiffs averred that in view of the defendants' failure to respond to the various letters that were addressed to them by the plaintiffs' advocates, they decided to engage a valuer to assess the loss that they had suffered following the demolitions that had been conducted by the defendants on their gate, wall and church building. The plaintiffs averred that their loss was assessed at Kshs.4,711,900/= inclusive of legal and valuation fees which is the amount being sought in the suit. The Plaintiffs averred that despite demand having been made for the payment of the said sum of Kshs.4,711,900/=, no response was received from the defendant.

After about five (5) months from the date of filing this suit, the plaintiff brought an application dated 26<sup>th</sup> January, 2018 seeking the following orders:

- a) That the Honourable court do hereby issue an order that no transaction, development, demarcation, demolition, subdivision, amalgamation, sale and or any activity related to the suit property, being Land Parcel L.R No. 27070, Nairobi be carried out by any of the parties and or their agents in this suit as well as any other person pending the hearing and determination of the suit.
- b) Costs of the application.

The plaintiffs' application was supported by an affidavit sworn by Rev. Franklyn Otwoma on 26<sup>th</sup> January, 2018 in which he stated that he was the Bishop of the 2<sup>nd</sup> plaintiff and that he had received a call from the agents of the 3<sup>rd</sup> defendant asking him to go to the suit property and witness the demarcation of the same. He stated that the phone call came as a shock to him because the matter was already before the court. He averred that unless the orders sought are granted, the plaintiffs would suffer great and unwarranted prejudice.

The application was opposed by the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> defendants through a replying affidavit sworn by Kenneth Nyaseda on 19<sup>th</sup> March 2018. The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> defendants (hereinafter referred to only as "the defendants") averred that the Government of Kenya as part of its development agenda had resolved in the year 2008 to undertake a slum upgrading project in Korogocho in line with the Millennium Development Goals (MDG). The intention of the project according to the defendants was to improve the dire living conditions that existed in Korogocho slum. The defendants averred that the objectives of the Korogocho Slum Upgrading Programme (hereinafter referred to only as "KSUP") were:

- (i) To have a detailed appreciation of Korogocho.
- (ii) To prepare an Advisory Physical Plan for Korogocho.
- (iii) To build capacity of various actors/institutions.
- (iv) To prepare sustainable integrated plan for upgrading korogocho.
- (v) To provide collective security of tenure to the residents of Korogocho.
- (vi) To implement concrete improvement to assure visible impact

The defendants averred that the scope of KSUP included, establishment of the boundaries of Korogocho settlement through a cadastral survey exercise, establishment of the land ownership status, the preparation of an advisory plan for Korogocho to establish the structure owners list and beneficiary list, construction of Korogocho Foot Bridge and Phase I and Phase II 4 km roads, construction of Korogocho Dispensary, construction of Korogocho playground and a motorable bridge and the preparation of a development plan.

The defendants averred that the main aim of KSUP was to improve the quality of living environment for the people of Korogocho and to enhance the social economic welfare of the residents through among others, easing congestion, poor housing, insecurity and improving basic infrastructure through participatory planning and management of the programme at every stage. The defendants averred that before the commencement of the KSUP, Korogocho Residents Committees (hereinafter referred to as "RC") were constituted to enhance their capacity to participate in the programme.

The defendants averred that the properties owned by the plaintiffs are situated at Gitathuru Village in Korogocho and that the village is represented in the RC by six (6) elected residents to enhance public participation of the residents in the programme. The defendants averred that KSUP under the leadership of a surveyor conducted an exercise to establish the boundaries of Korogocho which at the time was on Government land. They averred that this was followed by an exercise to identify the ownership of the structures in Korogocho and to prepare the beneficiaries list. The defendants averred that it is during this exercise that the plaintiffs' structures were picked and assigned structure number GC 187 and GC 422 with the full knowledge of the plaintiff. The defendants averred that the plaintiffs' properties were found to have encroached onto a road reserve and that the plaintiffs had complained during the construction of Road B in 2009.

The defendants averred that like every other resident of Korogocho the Plaintiffs were required to surrender their grant to facilitate planning and survey and issuance of new titles which were to be in accordance with the survey and approved development plan. The defendants averred that although there was a promise of the possibility of giving out to the plaintiff's alternative plots, the plaintiffs could still retain their plots after necessary adjustments in accordance with the development plan. The defendants averred that the 1<sup>st</sup> plaintiff was requested to surrender his title for the suit property. The defendants averred that the 1<sup>st</sup> plaintiff had been informed on various occasions that his title had several anomalies and that it was necessary for the said anomalies to be corrected and new titles issued. The defendants averred that the anomalies in the 1<sup>st</sup> Plaintiff's title to the suit property raised questions about the validity of the title as the property among others overlapped on other titles, encroached on existing main water pipe and a gazetted 18 m road.

The defendants averred that in addition, the plaintiffs breached the user condition of the grant by running a medical centre on the property instead of an education facility only. The defendants averred that in view of the aforesaid anomalies which the plaintiffs admitted, the 1<sup>st</sup> plaintiff agreed to surrender the title for the suit property to facilitate planning process and survey after which a fresh title was to be issued to it in accordance with the approved plan. The defendants averred that they have adequately compensated the plaintiffs by allocating to them a parcel of land which accommodates all the structures that they had on the suit property during the structure census exercise save for the portions of their land that was found to be an a road reserve.

The defendants averred that allocating more land to the plaintiffs would be detrimental to other residents of Korogocho who also need land. The defendants averred that if the orders sought by the plaintiffs are granted, the entire KSUP would be put in jeopardy to the disadvantage of the residents of Korogocho. The defendants denied that they have encroached on the suit property.

The application was heard on 5<sup>th</sup> April, 2018 when Mr. Mingo appeared for the plaintiffs while Mr. Eredi, State Counsel, appeared for the defendants. In his submissions in support of the application, Mr. Mingo argued that the plaintiffs had a title to the suit property which deserves protection by the court. Mr. Mingo submitted that the plaintiffs were to be given alternative land as compensation and that the defendants were demarcating the suit property contrary to the agreement which the parties had reached. Mr. Mingo submitted that the land that was offered to the plaintiffs by the defendants was smaller in size compared to the land that the plaintiffs had surrendered. Mr. Mingo urged the court to grant the orders sought so as to preserve the subject matter of the suit.

In his reply to the submissions by the plaintiffs, Mr. Eredi submitted that the plaintiffs did not seek an injunction in their plaint and as such they were not entitled to an interlocutory injunction. He argued further that the plaintiffs had not met the conditions for grant of interlocutory injunction. He submitted that the project sought to be stopped was a public project and if the orders sought were granted, the public would suffer more than the plaintiffs since the project was at advanced stage of completion. Mr. Eredi submitted that the plaintiffs would not suffer irreparable harm which could not be compensated in damages if the orders sought were not granted.

I have considered the plaintiffs' application together with the affidavit filed in support thereof. I have also considered the defendants' affidavit in opposition to the application and the submissions of counsel. The following is my view on the matter. I am not satisfied that the plaintiffs have met the conditions for granting an interlocutory injunction. In their affidavit in support of the application, the plaintiffs have not come out clearly in what manner the defendants have interfered with their interest in the suit property and how failure to stop KSUP would prejudice their interest in the suit property whose title they appear to have surrendered already to the defendants. I am not satisfied that the plaintiffs have established a prima facie case with a probability of success.

I am also not satisfied that the plaintiffs would suffer irreparable harm which cannot be compensated in damages. In their plaint, the plaintiffs have claimed a liquidated amount as compensation. The plaintiffs have not sought an injunction. If I understood the plaintiff case well, the plaintiffs claim relates to the loss suffered as a result of demolition of their properties and the reduction in the size of land that has been offered to them after they surrendered the suit property. For the loss suffered during demolition, the plaintiffs have already claimed KShs.4,711,900/=. For the land lost through the reduction in the size of the land that has been offered to them after the surrender of the title for the suit property, the land size is known and the value can be assessed and compensation paid.

Due to the foregoing, I find no merit in the Notice of Motion dated 26<sup>th</sup> January, 2018. The application is dismissed with costs to the defendants.

**Delivered and Dated at Nairobi this 13<sup>th</sup> day of December 2018**

**S. OKONG'O**

**JUDGE**

**Ruling read in open court in the presence of:**

Ms. Gathua for the Plaintiff

Mr. Eredi for the Defendant

Catherine-Court Assistant