



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 20 OF 2017**

**NAKURU MATERNITY AND NURSING**

**HOME LIMITED.....PLAINTIFF**

**VERSUS**

**THE COUNTY EXECUTIVE MEMBER**

**IN CHARGE OF LAND, HOUSING AND**

**PHYSICAL PLANNING .....1<sup>ST</sup> DEFENDANT**

**NAKURU COUNTY GOVERNMENT .....2<sup>ND</sup> DEFENDANT**

**RULING**

***(Application for injunction; plaintiff owning certain land and subdividing it to expand its hospital; defendants permitting the construction of stalls within the frontage of the plaintiff's land and blocking its access; no response filed by the defendants; application for injunction allowed; defendants ordered to stop construction of the stalls pending hearing of the suit)***

1. This suit was commenced by way of plaint filed on 27 January 2017. The case of the plaintiff is that it is the registered owner of the land parcel Nakuru Municipality/Block 10/199 now subdivided into the land parcels No. 397 to 402. It is pleaded that on 23 January 2017, the defendants sent personnel to the frontage of the plaintiff's said parcel of land and proceeded to erect illegal metallic stalls. The plaintiff avers that it approached the workers to stop the illegal construction but they instead continued constructing on the plaintiff's frontage with intention to annoy. The plaintiff then did a demand letter dated 24 January 2017 which was ignored. The plaintiff has pleaded that the erection of the metallic stalls is a nuisance to the plaintiff's quiet and peaceful occupation of its land. It is said that on the parcel of land is a hospital known as Nakuru Maternity & Nursing Home and there are plans to extend the facility. It is averred that the access route for the intended extension is on the area where the defendants have now sanctioned construction and this will cause the plaintiff irreparable loss.

2. In the suit, the plaintiff wants the defendants permanently restrained from interfering with the plaintiff's quiet possession and use of the suit land.

3. Together with the plaint, the plaintiff filed an application for injunction, seeking to have the defendants and/or their servants/employees/agents, restrained from further construction of the impugned works until

this case is heard and determined. The supporting affidavit to the application is sworn by Muriithi Kimani, a director of the plaintiff company. He has more or less repeated what I have set out above as the cause of action. He has annexed copies of the Certificate of Lease for the land parcel Nakuru Municipality/Block 10/199, a mutation form, and some photographs of the site.

4. Despite being served, the defendants have not filed anything to oppose the motion. Indeed, the defendants have not even entered appearance to this suit. The only material that is before me is therefore that which has been presented by the plaintiff.

5. I have seen that the plaintiff is the registered proprietor of the land parcel Nakuru Municipality/ Block 10/199. I have also observed that the said parcel of land has been subdivided to result into five parcels of land. It is the position of the applicant that it has embarked on the process of expanding the hospital situated within the suit land but the works which are being undertaken by the defendants will impede access to its land. I have taken note of the photographs which appear to show construction of stalls along a road. The plaintiff avers that this construction will cause it not to have quiet possession of its land and will affect its use of it.

6. As I stated, the application is unopposed. I have no reason to doubt the averments of the plaintiff. It is apparent to me that if the construction is not stopped, the same will interfere with the plaintiff's occupation and use of its own land and will cause the plaintiff loss that may be irreparable.

7. I therefore allow the application for injunction. I hereby issue an order stopping the defendants and/or their servants/agents/assigns from proceeding with any further construction of stalls or any other structure along the frontage of the plaintiff's land parcel Nakuru Municipality/Block 10/199 now subdivided into the land parcels Nakuru Municipality/Block 10/397-402.

8. The plaintiff shall also have costs of this application.

9. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 23<sup>rd</sup> day of February 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of :**

No appearance on the part of Mrs. Mukira for the plaintiff/applicant

No appearance on the part of the defendant/respondent

Court Assistant :Nelima

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**