



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC CASE NO. 7B OF 2015

FREDRICK LAIBUNI MAILUTHA.....PLAINTIFF/APPLICANT

VERSUS

COUNTY GOVT. OF KAJIADO.....1ST DEFENDANT/RESPONDENT

SUSAN LANET.....2ND DEFENDANT/RESPONDENT

DANIEL KANCHORI.....3RD DEFENDANT/RESPONDENT

RULING

1. The Application before me is the one dated 16th January, 2015. In the Application, the Plaintiff is seeking for the following orders:

a. That this honourable court be pleased to give temporary injunction restraining the Respondents their agents, servants and or employees from trespassing, interfering, occupying and or alienating the Plaintiff Plot No. 1313 NoonKopir Trading Centre, Kitengela and intimidating/threatening to evict the occupants of the plot pending the hearing and determination of the entire suit.

b. That Costs of this Application to be provided for.

2. The Application is premised on the grounds that the Plaintiff is the registered proprietor of Plot No. 1313 Noonkopir Trading Centre and that the 1st Defendant has unlawfully trespassed on the suit property by constructing a road whereas the 2nd and 3rd Defendants have threatened the occupants of the property with eviction.

3. The Applicant deponed that he has been in occupation of the suit land for more than fifteen (15) years and that the 1st Defendant has constructed a public road over the suit land without any legal justification.

4. In response, the 1st Defendant's County Secretary deponed that the Plaintiff is not the registered proprietor of the suit land; that the letter of allotment does not confer on an individual indefeasible or absolute rights of ownership and that the Applicant does not have evidence to show that he followed due process to change the user of the land from a nursery school to a private health facility.

5. According to the 1st Defendant, the Plaintiff has breached condition numbers 1 and 2 by not developing the land and that the 1st Defendant only issued notices to demolish the structures that were on road reserves.

6. In his Supplementary Affidavit, the Plaintiff deponed that the 1st Defendant's predecessor approved the allocation of the suit land; that he did not purchase the suit property for the purposes of putting up a school and that he also purchased the neighbouring plots being plot numbers 1312 for the purposes of putting up a health training facility.

7. It is the Plaintiff's case that he has constructed a health training facility on plot number 183 and that the suit property has a placenta pit, an incinerator room and houses for the support staff.

8. The advocates for the Plaintiff and the Defendant filed written submissions together with authorities which I have considered. The Plaintiff has annexed on his Affidavit the letter of allotment dated 7th November, 2002 for plot number 1313 measuring approximately 2½ acres.

9. The said letter of allotment was issued by the 1st Defendant's predecessor, Olkejuado County Council, on condition that the plot is developed for "health care facilities."

10. On 18th October, 2011, the Commissioner of Lands formalized the allocation of the said land by issuing to the Plaintiff with a letter of allotment for the suit property.

11. The letter of allotment by the Commissioner of Lands together with a Part Development Plan (PDP) has been annexed on the Plaintiff's Supporting Affidavit.

12. The Plaintiff has exhibited the Minutes of the County Council of Olkejuado Town Planning Works and Markets Committee of 22nd July, 2009 which shows that the Committee approved the issuance of a Lease in respect of plot number 1313 to the Plaintiff. The resolutions of the Committee were subsequently adopted by the full council on 8th December, 2009. The evidence before the court shows that in the year 2002, a part development plan for the suit property was published by the Director of Physical Planning in the Kenya Gazette of 9th October, 2003.

13. The Defendants have not offered any evidence to show that the suit property was at any particular time set aside for a nursery school, or that the said plot was allocated to the Plaintiff for that purpose.

14. The Defendants have also not shown that the suit property is not being used as an extension of a health facility which has been constructed on the neighbouring plot, which is also owned by the Plaintiff.

15. Considering that the suit land was allocated to the Plaintiff by the 1st Defendant's predecessor, and in view of the fact that the Plaintiff has exhibited correspondences showing the efforts he has made to acquire the title documents, the Plaintiff has the legitimate expectation of using the land notwithstanding the fact that he has not been issued with the title documents.

16. In the circumstances, and in view of the materials placed before this court, I find and hold that the Plaintiff has established a *prima facie* case with chances of success, and that he is likely to suffer irreparable damage that cannot be compensated by way of damages unless the injunctive order is granted.

17. For those reasons, I allow the Application dated 16th January, 2015 as prayed.

DATED AND DELIVERED AT MACHAKOS THIS 17TH DAY OF MARCH, 2017.

OSCAR A. ANGOTE

JUDGE