



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 888 OF 2016

**BURUBURU RIVERBANK DEVELOPMENT COMMITTEE (Suing through
the Chairman, Treasurer and Secretary).....PLAINTIFF**

VERSUS

NAIROBI CITY COUNTY.....DEFENDANT

RULING

The Plaintiffs seek an injunction against the Defendants to restrain the Defendants, its officials, servants or agents, from enforcing a notice dated 31st May, 2016 which they term unlawful and unprocedural until this suit is heard and determined. The Plaintiffs further seek an order that the Defendant provides clarity on the intentions of the notice dated 31st May, 2016. The Plaintiffs seek a fourth prayer couched in the following terms;

“That the temporary injunctions do issue conditionally with the Plaintiff/applicant and Defendant/responded entering into court supervised mediation with the view to entering a consent judgment.”

The Plaintiffs represent a substantial number of allottees who reside in an area known as Buruburu Riverside Estate (City Carton) hereafter referred to as “City Carton Estate”. The application is supported by the affidavit of Joseph Otieno Ouko who is the Plaintiffs’ chairman. He depones on behalf of the residents of the area known as City Carton Estate that this settlement was regularised by the City Council of Nairobi on or about the year 2002 and relies on the Council’s minutes in support of this assertion. It is urged that the Plaintiffs met their contractual obligations to the defunct Nairobi City council.

The Plaintiffs allege that the Defendant unilaterally issued a notice devoid of clarity purporting to move the Plaintiffs from their City Carton Estate yet they have genuine letters of allotment which were issued by the Defendant’s predecessor, the City Council of Nairobi. Copies of some of the letters of allotment and evidence of payment of rates were exhibited.

The Plaintiffs complaint is that the notice issued by the Defendant lacks clarity as it seeks to move some of the allottees to unknown locations yet many of the occupants of this area have built permanent structures where they reside within City Carton Estate. The Plaintiffs contend that the Defendant did not involve the occupants of the settlement scheme when it took the decision to relocate them from the plots they currently occupy.

The application is opposed. The Defendant relied on the affidavit of Eric Odhiambo Abwao who is its Assistant Director, Legal Affairs. The Defendant submitted that issuing an injunction to restrain it from

enforcing the notice dated 31st May, 2016 will hamper the Defendant in realising its constitutional mandate which entails the regularisation of town planning, construction and building.

The Defendant maintains that the planning, allocation, survey, demarcation/ beaconing and showing of plots in Buruburu Riverside Estate (City Carton) was done with the knowledge and participation of the Plaintiffs and that each Plaintiff was shown his plot.

The Defendant argues that the Plaintiffs have not demonstrated any good reason for not complying with the notice and for not relocating to their individual plots which the Defendant's surveyor has pointed out to each one of them. The Defendant's view is that if the Plaintiffs relocated to their individual plots as directed by the notice, then the development of public infrastructure will be undertaken which will enhance service delivery within this estate for the benefit of the Plaintiffs.

The Defendant avers that if any person constructed permanent houses, then this was done illegally since the building plans for these structures were never approved by the Defendant as required by law. The Defendant maintains that no title deeds have been issued to the Plaintiffs. Titles can only be issued once the informal settlement scheme is formalised and regularised through the process which the Plaintiffs are now resisting. Further, the Defendant argues that title deeds cannot be issued without putting in place the necessary infrastructure such as roads, sewerage system, electricity connection and other infrastructure.

The Defendant accuses the Plaintiffs of material non-disclosure of the full facts. It faults them for not producing survey maps and beacon certificates which show the location of each plot where each of the Plaintiffs is required to move to. The Defendant believes that this application is calculated to derail it from realizing its objectives and mandate. It maintains that the Plaintiffs were all along aware of the fact that the informal settlement scheme had to go through regularisation as stipulated by the Physical Planning Act. The Defendant argues that the regularisation exercise is not meant to prejudice the Plaintiffs or deprive them of their plots.

The court has considered the application and affidavit together with the written submissions of both parties. The question for determination is whether the Plaintiffs have made out a case for the court to grant the orders they seek in line with the principles set out in **Giella V. Cassman Brown & Co. Ltd** [1973] EA 358.

The land in question is an informal settlement scheme. It is important to reproduce the notice complained of here. It reads;

“PUBLIC NOTICE”

To all Plot Owners

Buruburu Riverside Estate (City Carton)

RE: NOTICE TO RELOCATE TO YOUR INDIVIDUAL PLOTS

The above matter refers.

Following completion of Planning, allocation, survey, demarcation/ beaconing and showing of plots in the Buruburu Riverside Estate (City Carton) to yourself i.e. all plot owners in the above scheme), please note you are now required to relocate to your plot, as shown to you by our Surveyor, within three (3) months from the date of this notice.

Kindly oblige to permit private development as well as public infrastructure development and service delivery in line with the objectives of the regularization of the scheme.

S. G. Mwangi

For county secretary

Dated 31st May, 2016

The notice informs all plot owners of City Carton Estate that within three months, each one of them is required to relocate to his plot following completion of planning, allocation, survey and demarcation/beaconing of plots in City Carton Estate. The notice states that each plot owner was shown his plot.

The Plaintiffs have not shown that the plots which were allocated to them are different from the ones which the Defendant's notice is asking them to relocate to. There is no evidence to show that the Defendant has threatened to evict the Plaintiffs.

The court is persuaded that the Plaintiffs must have been involved in the regularisation process resting with each one of them being shown their plot by the Defendant's surveyor. For the surveyor to have shown each of the Plaintiffs the beacons demarcating his plot, they must have been present during that exercise. The Plaintiffs do not have documents of title over the plots in the informal settlement scheme. They rely on letters of allotment which only state that the term of the lease is the residue of 99 years from an unspecified date.

The court is of the view that the Plaintiffs have not demonstrated that they have a prima facie case with the probability of success against the Defendant for the court to grant the orders they seek.

The application is dismissed with no orders as to costs.

Dated and delivered at Nairobi this 9th May 2017.

K. BOR

JUDGE

In the presence of: -

J. Ngugi for the Plaintiffs

No appearance for the Defendant

Mr. V. Owuor- Court Assistant