



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

CASE NO. 99 OF 2017(O.S)

IN THE MATTER OF THE LIMITATION OF ACTIONS ACT (CAP 22 OF THE LAWS OF KENYA)

AND

IN THE MATTER OF AN APPLICATION FOR THE REGISTRATION OD LAND UNDER SECTION 38 OF THE LIMITATION OF ACTIONS ACT

BETWEEN

EXPORT PROCESSING ZONES AUTHORITY.....PLAINTIFF/APPLICANT

AND

1. EMBAKASI RANCHING LIMITED)

2. JAMES KIOI MUHURI t/a Manyatta Commercial)

Agency, Manyatta Estates Agency, Trans Athi)

Transporters and Masai Gypsum)

3. MARY WAMBUI DICKSON)

4.FLORENCE NJERI MAINA)

5. JOEL MBURU)

6. JEREMIAH MWEU MULILI)

7. JAMES MACHARIA KARIUKI)

8. PETER MAINA NDEGWA)

9. GEORGE MAINA MICHAEL)

10. FRANCIS MUIGA GITAHI)

11. MBANDU STORES LIMITED)

12. DANIEL MUSYOKI).....DEFENDANTS/RESPONDENTS

RULING

The application before this court is a notice of motion application dated the 10th March 2017 and filed on 14th March, 2017. It is filed by the Plaintiff and brought under Order 40 Rule 1 (a), 2 and 4 of the Civil Procedure Rules and Sections 1A, 1B, and 3 A of the Civil Procedure Act. The Plaintiff is seeking for the following prayers:

1. spent

2. spent

3. spent

4. **That** an injunction be issued pending the hearing and determination of the suit herein restraining the Defendants/Respondents, their agents, servants, contractors, and all and each of them whether by themselves or otherwise howsoever from trespassing onto, entering, remaining on, selling, alienating, transferring, charging, developing, or in any other way interfering with Land Parcel Numbers KAJIADO/NORTH KAPUTIEI/ 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 193, 194, 205, 206, 207, 208, 209, 210, 211, 214 and 215.

5. **That** the Defendants/Respondents do pay the costs of this application.

6. Any further or other orders as this Honourable Court may deem just.

The application is premised on the following grounds:

a) The Plaintiff/Applicant is a State Parastatal duly established under the Export Processing Zones Act (Cap. 517 Of Kenya).

b) In June 1991, the Government of Kenya lawfully acquired the aforesaid suit properties from the 1st Defendant/Respondent for the Export Processing Zones Authority (the Plaintiff/Applicant).

c) The suit properties were acquired by the Government of Kenya as aforesaid by compulsory acquisition vide Kenya Gazette Notice Nos. 2802 and 2803 of the 13/6/1991; and the 1st Defendant was duly paid/compensated for the said properties as by law required.

d) Upon the aforesaid acquisition, the Plaintiff/Applicant took possession and occupation of the suit properties on or about 1991, and has been in open, continuous, uninterrupted and exclusive possession and occupation thereof, and has thereon permanent buildings, installations, and infrastructure which include tarmacked roads serving the Plaintiff/Applicant's Athi-River Export Processing Zone Complex.

e) Between the year 2008 and 2001 or thereabouts, the Defendants/Respondents wrongfully, unlawfully, fraudulently and secretly had themselves registered as the owners of the suit properties and unlawfully acquired purported titles thereto.

f) The agents of the Defendants/Respondents have now started encroaching onto the suit properties and parking motor vehicles/trucks thereon; and thus obstructing the Plaintiff/Applicant's operations thereon.

g) The Plaintiff/Applicant stands to suffer irreparably unless orders sought herein are urgently granted.

The application is supported by the affidavit of one FANUEL KIDENDA who is the Chief Executive

Officer of the Plaintiff/Applicant. He avers that the Plaintiff is a State parastatal duly established under the Export Processing Zone Act and that in June 1991 the Government Kenya acquired 56 plots/ parcels of land by compulsory acquisition under the Land Acquisition Act, for the Export Processing Zone. The acquired plots include Land Parcel Numbers KAJIADO/NORTH KAPUTIEI/ 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 193, 194, 205, 206, 207, 208, 209, 210, 211, 214 and 215. He avers that the said acquired plots were initially registered in the name of Embakasi Ranching Company Limited. Further that the said plots were acquired vide Kenya Gazette Notice Nos. 2802 and 2803 of 13th June 1991; and that Embakasi Ranching Company Limited was paid a compensation of Kshs. 2,850,850 for the said plots. The Plaintiff took possession of the suit properties on or a out November 1991.

The Plaintiff was represented by Mrs. Nzei. None of the Defendants entered appearance although they were served vide substituted service through the Daily Nation Newspaper dated 13th April, 2017 Classified page 57. Further, the first Defendant had initially been served on 4th April, 2017 but never entered appearance.

The Plaintiff's notice of motion application dated 10th March, 2017 hence proceeded unopposed.

The Plaintiff's counsel submitted that despite the compulsory acquisition and compensation to the 1st Defendant; todate the 1st Defendant has failed and or refused to surrender the title deeds to the Land Registrar Kajiado to effect the transfer in the Plaintiff's name. The parcels of land adjoin one another and the Plaintiff has undertaken extensive development thereon. Further, that despite the Plaintiff severally requesting for the title deeds of the suit properties, the 1st Defendant proceeded to unlawfully and fraudulently transfer the suit properties to the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th Defendant knowing fully well it did not have the legal right to do so. The Defendants have commenced interfering with the Plaintiff's peaceful occupation of the suit parcels of land by parking trucks thereon, thus hampering the Plaintiff's operation.

Upon perusal of the pleadings filed by the Plaintiff and upon hearing the arguments canvassed by the Plaintiff's counsel, it is my finding that the Plaintiff has met the threshold of granting interlocutory injunction as set out in the case of **Giella vs. Cassman Brown & Co. Ltd (1973) E.A 358**. The test are follows:

- The applicant must show a prima facie case with a probability of success
- An injunction will not normally be granted unless the applicant might suffer irreparable injury
- When the court is in doubt, it will decide the application on a balance of convenience

With regard to whether the Plaintiff has shown a prima facie case, I must say they have done so as they lawfully acquired the suit parcels of land through the Government compulsory acquisition vide a Kenya Gazette Notice Nos. 2802 and 2803 of 13th June, 1991. The 1st Defendant was thereafter compensated for the suit parcels of land on 27th November, 1991 by the Senior Account Controller (Ministry of Finance) vide a Cheque No. D7 -000666 for Kenya Shillings 2,850,850 . The Plaintiff/Applicant took possession and occupation of the suit properties on or about 1991, and has been in open, continuous, uninterrupted and exclusive possession and occupation thereof, and has constructed thereon permanent buildings, installations, and infrastructure which include tarmacked roads serving the Plaintiff/Applicant's Athi-River Export Processing Zone Complex. The Plaintiff has demonstrated it will suffer irreparable loss and damage as it is currently operating the Export Processing Zones Complex on the suit parcels of land.

I find merit in the Plaintiff's notice of motion application dated the 10th March 2017 and filed on 14th March, 2017 and grant prayers no. 4 and 5 of the application pending the hearing and determination of this suit.

Dated signed and delivered in open court at Kajiado this 2nd day of May, 2017.

CHRISTINE OCHIENG

JUDGE

REPRESENTATION.

Court Clerk-Mpoye

Mr. Nzei for Plaintiff/Applicant

No attendance for defendants.