



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. SUIT NO. 410 OF 2017

GEORGE GITIBA NJENGA.....PLAINTIFF

VERSUS

NAIROBI CITY COUNTY.....1ST DEFENDANT

NATIONAL CONSTRUCTION AUTHORITY.....2ND DEFENDANT

RULING

The Plaintiff filed a plaint on 20th June, 2017 together with an application under certificate of urgency seeking interim orders. The court directed on 20th June, 2017 that the application was to be served for *inter partes* hearing on 28th June, 2017.

On 28th June 2017 Mr. Gathiriwa informed the court that both Defendants had been served and that he was seeking ex-parte orders since the matter was urgent. Ms. Marindich had just been instructed to appear for the 2nd Defendant and indicated to the court that she required time to file the 2nd Defendant's response. She informed the court that the 2nd Defendant does not demolish buildings; it only suspends the construction of buildings and recommends demolition if a building is unsafe. The court directed that the 1st Defendant was to be served to attend court on 29th June 2017 at 2.30 pm.

Counsels for all the parties attended court on 29th June, 2017.

Mr. Gathiriwa who appeared for the Plaintiff urged the court to grant prayer 2 of the application dated 19th June 2017 which seeks to restrain the Defendants from demolishing, wasting, collapsing or in any way interfering with the building erected on L.R. No. Nairobi/Block 113/13 ("the Suit Property"). The Plaintiff's counsel urged that were the orders to be granted the Defendants would not suffer any prejudice but if they are denied the Defendants' agents may enter upon the Suit Property and demolish the structures on it.

Ms. Marindich indicated that she requires clarification on why the 2nd Defendant was joined in the proceedings before the 2nd Defendant could respond to the application.

Mr Mutahi advocate informed the court that he had just come on record for the 1st Defendant and required time to respond to the application. He pointed out the matter involves a building in respect of which an enforcement notice had been issued for the structure to be brought down since it was not approved by the 1st Defendant. Mr. Mutahi was opposed to the grant of interim orders sought by the Plaintiff. He stated that the enforcement notice was issued for public safety. He argued that allowing prayer 2 will determine

this application and suit. He stated that the 1st Defendant's officers are on site and have barricaded the Suit Property to preserve public safety and security following the collapse of a building next to it which killed several people. The 1st Defendant ordered the Plaintiff to evacuate all his tenants and the building was vacant. He further urged that allowing the application would mean the 1st Defendant's officers would leave the area with the risk of anything happening in the building that may endanger public safety. He pointed out that in the recent past, several buildings have unfortunately collapsed killing people, a fact which is within public knowledge and has attracted public outcry and condemnation. He submitted that the 1st Defendant has been accused of negligence among other failings when those buildings collapsed. He also stated that it is within the 1st Defendant's jurisdiction and mandate to ensure that all buildings within Nairobi County are safe for human habitation. He submitted that since the documents annexed to the application do not show that the building is safe, it is prudent to have the 1st Defendant's officers remain on site and prevent people from getting into the condemned building to ensure public safety.

In reply Mr. Gathirwa stated that the 2nd Defendant's role is to streamline, regulate and build capacity in the construction industry and that the building that collapsed falls within the 2nd Defendant's mandate. He submitted that the 2nd Defendant had had ample time to respond to the application from 21st June, 2017 when it was served. He argues that the 1st Defendant has threatened to enter the building and bring down the structure without considering the technical reports prepared by the Plaintiff's engineers that confirm that the building is safe and fit for human habitation. He maintained that the Plaintiff had been condemned without being heard and that the decision to order him to bring down the building was hastily made without considering the technical input of their 1st Defendant's engineers. He sought time so that the parties could appoint engineers to inspect the premises and give a report on the safety of the building.

The court has considered the submissions made by counsel and agrees that the 1st Defendant ought to be granted time to file its response so that the court may make a fair determination of the issues in dispute. The court was informed that enforcement notices were issued to several buildings surrounding the building that collapsed in which it is reported to have claimed 7 lives. To preserve public safety and security which is the mandate of the 1st Defendant, the court agrees that it will be necessary to have the 1st Defendant's officers and agents remain on the Suit Property to prevent members of the public from getting into the building. The court is reluctant to grant the interim orders sought due to the danger posed to members of the public and their safety.

The court therefore directs the Defendants to file and serve their responses within 10 days so that the substantive application can be heard.

Read and delivered in open Court on 29th June 2017

K. BOR

JUDGE

In the presence of:

Mr. Gathirwa for the Plaintiff

Mr. Mutahi for the 1st Defendant

Ms. Marindich for the 2nd Defendant

Mr. V. Owuor- Court Assistant