



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 77 OF 2017

KIPLAGAT KOSGEI1ST PLAINTIFF

DANIEL MARITIM 2ND PLAINTIFF

SAMUEL CHEPKWONY 3RD PLAINTIFF

VERSUS

RICHARD KIPKOECH RUTO.....1ST DEFENDANT

THE PERMANENT SECRETARY, MINISTRY OF

INTERIOR & CORDINATION2ND DEFENDANT

HON. ATTORNEY GENERAL3RD DEFENDANT

RULING

1. This ruling is in respect of plaintiff’s Notice of Motion dated 27thFebruary 2017. The application is brought under Order 40 rules 1 and 2 of the Civil Procedure Rules. The plaintiffs principally seek the following order:

3.This Honourable Court be pleased to grant a temporary order of injunction restraining the 1st Defendant/Respondent either by himself, his employers, his servants, employees and or agents from trespassing, encroaching, alienating, as well as continuing with construction on land parcel number NJORO/NGATA BLOCK 5/206 and/or in any other way interfering with Ogilgei community’s quiet enjoyment of any or part of or the entire piece of land known as NJORO/NGAT BLOCK 5/206 pending the hearing and determination of this suit.

2. The application is supported by the affidavit of Kiplagat Kosgei, the 1stplaintiff. He deposes that that parcel number Njoro/Ngata Block 5/206, the suit property, has been serving the local community of about 20,000 people as the location of a water tank since some time after the year 1983. He exhibited the green card of the suit property which shows that the registered owner is the government of Kenya. He further deposed that the water project has been registered with the Ministry of Gender, Sports, Culture and Social Services as a Self-Help Group with the objective of supplying water to members of the local and neighbouring communities. That the first defendant who is the local assistant chief has sought tenders for the construction of an administrative office on the suit property and that the construction of, and presence of government offices on the suit property will interfere with the water project. That there is alternative land available for construction of the administrative office but the defendants have disregarded

suggestions to use the alternative land. The plaintiffs urge the court to grant the injunction sought.

3. When the application first came up for inter parte hearing on 14th March 2017, the office of the attorney general appeared for the defendants and sought time to file a response. The application was thus adjourned to 9th May 2017 on which date the attorney general yet again sought more time to file a reply to the application. The application for adjournment was declined and the hearing of the application proceeded without any replying affidavit or grounds of opposing having been filed by the defendants. Ms. Cheruiyot, learned litigation counsel submitted on behalf of the defendants that the suit property is owned by the government of Kenya and the administrative office being constructed is equally owned by the government of Kenya. She thus urged the court to dismiss the application. Ms. Wanjiru, learned counsel for the plaintiff urged the court to allow the application since the green card of the suit property besides showing the registered owner as the Government of Kenya also shows "Water Tank" noted in the property section of the register.

4. I have considered the application, the affidavit filed in support as well as submissions of counsel on both sides. There is no dispute that the registered proprietor of the suit property is the Government of the Republic of Kenya. There is also no dispute that the construction which is to take place is that of an administrative office of the Government of Kenya. Needless to state, a registered proprietor of land is entitled to the full benefits of proprietorship including the protection of the law afforded by virtue of such registration. In the circumstances, I am not persuaded that the plaintiffs have a prima facie case with a probability of success. That being the case, I am not required to inquire as to whether the other limbs of the test is **Giella vs Cassman Brown and Company Limited (1973) EA 358** have been established.

5. From the foregoing discourse, it is manifest that Notice of Motion dated 27th February, 2017 must fail. It is dismissed. No order as to costs.

Dated, signed and delivered in open court at Nakuru this 16th day of June 2017.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the plaintiffs

No appearance for the defendants

Court Assistant: Gichaba