



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MILIMANI

ELC 502 OF 2015

JOHN MWANGI KING'ORI.....PLAINTIFF/APPLICANT

=VERSUS=

BERNARD KAMAU MWATIDEFENDANT/RESPONDENT

RULING

1. The Plaintiff/Applicant filed a Notice of Motion dated 5th June 2015 in which he sought the following reliefs:-

a. Spent

b. Spent

c. That a temporary injunction be and is hereby issued restraining the defendant, his employees, servants and or agents from closing or refusing to open an external gate on access road to enable the Plaintiff access his land and house in respect of land premises namely I.R. 95886 and LR No. 3577/30 at Nairobi North, opposite Kamiti Maximum Prison pending the hearing and determination of this suit.

d. That a mandatory injunction be issued compelling the defendant, his employees, servants and or agents to forthwith remove an external gate on access road at his own cost to enable the Plaintiff access his land and house in respect of land premises namely I.R. 95886 and L.R. No. 3577/30 at Nairobi North, opposite Kamiti Maximum Prison pending the hearing and determination of this suit.

e. That costs of this application be provided for.

2. The Applicant and the Respondents are neighbours at an estate which is off Kamiti Road opposite Kamiti Maximum Prison. The land owners in the area came together and formed an association known as Kamiti Damview Gardens Welfare Association. One of the objectives of the Association which is duly registered is security of the residents. The members of the Association agreed to erect a gate to the entry of the estate where individual land owners have their own compounds with gates. The gate was erected and guards stationed there to open and close for members entering the estate. The members were paying a monthly contribution to cater for payment of the guards and other services for the benefit of the residents.

3. On 26th May 2015, the management of the association issued an internal memo stating that residents and plot owners who would not have paid security fees by 1st June 2015 will not have the gate opened for themselves by the guard. The Applicant who had not paid the required amount was one of the victims of the memo. He came and the guards could not open the gate for him. He was forced to alight from his car and open the gate for himself. This is what prompted him to file the present application in which he contends that what the Respondent is doing is illegal and that his security is being endangered as he has to alight from his car and open the gate for himself. That this exposes him to attacks by criminals. He contends that there is no need for an external gate as each owner of a house in the estate has his or her own house with a gate. He therefore seeks to have orders for removal of the gate.

4. The Applicant's application is opposed by the Respondent who contends that the Applicant has failed to disclose material facts. That the Respondent is the Chairman of the association to which the applicant is a founder member. That the Applicant has been attending meetings of the association which he now claims is non-existent. That the Applicant does not want the gate because he has erected tents on his property which he uses for public functions like weddings and he does not want the gate to be closed so that people can access the area freely. This, the respondent argues will compromise the security of the area.

5. I have carefully considered the Applicant's application as well as the opposition thereto by the Respondent. This is application for injunctive reliefs which are given at the discretion of the court. Whoever comes to the court has to come with clean hands as the relief is an equitable remedy. In the instant case, the Applicant did not want to disclose that the Association was sanctioned and is registered. He is one of the founder members of the association and has participated in its activities before. He sued the Respondent as an individual without disclosing that the Respondent is the chairman of the association.

6. The association is duly registered with a constitution on how the association operates. The Applicant is relying on a letter which his advocates wrote to the Registrar of societies. The Registrar of societies at first wrote back and said that the association did not exist. However later, it was confirmed that the association existed and its registration number was given.

7. It is clear that the Applicant did not want to disclose material facts and such a person cannot be granted an injunction which is an equitable remedy. The applicant says that he can afford to pay his own guards and therefore there is no need for an external gate. The Applicant is turning round and denouncing the issue of the gate which he was party to its erection. He has been attending meetings of the association and has made contributions towards the welfare issues of the estate such as roads within the estate.

8. The principles for grant of injunction are now well settled. First an applicant has to demonstrate that he has a *prima facie* case with probability of success. In the instant case, the Applicant has not demonstrated that he has a *prima facie* case with probability of any success. The Applicant is the author of his own problems. He cannot expect a gate to be opened for him if he does not pay as per the association requirements of which he was instrumental but is now turning round to denounce. I find that the applicant's application lacks merit. The same is hereby dismissed with costs to the Respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 31st day of July, 2017

E. OBAGA

JUDGE

In the absence of parties who had been notified of the date and time of delivery of ruling

Court Assistant: Hilda

E. OBAGA

JUDGE