



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL SUIT NO. 1060 OF 2015

TERESIA MURAGE KANYUTU.....PLAINTIFF

=VERSUS=

DORCAS WAMAITHA MUNUHE.....DEFENDANT

R U L I N G

1. This suit relates to an unsurveyed and untitled plot situated in Dandora Phase 1, designated by the defunct Nairobi City Council as Plot No. 191 Komarock Bridge (hereinafter referred to as **“the suit property”**). The Plaintiff contends that she is the beneficial owner of the plot. The defendant similarly contends that she is the beneficial owner of the same plot. Both parties contend that they were allocated the suit property by the defunct City Council of Nairobi.
2. By a Notice of Motion dated 27/10/2015, the plaintiff seeks an interim injunction restraining the defendant together with her servants and agents against selling, disposing, entering into, or building any structures on the suit property. The defendant through a replying affidavit sworn on 24/11/2015 opposes the Application. This Ruling relates to that Notice of Motion by the plaintiff dated 27/10/2015.
3. The issue for determination in the Application is whether the plaintiff has satisfied the criteria for grant of an interim injunction as laid down in **Giella Vs Cassasman Brown & Co. (1973) EA**. In summary, the applicant is obligated to establish a prima facie case with a probability of success. Secondly, she is required to demonstrate that if the injunction is not granted she will suffer irreparable injury that cannot be compensated by an award of damages. If the court is in doubt, the Application is to be determined on a balance of convenience.
4. The plaintiff contends that she is the legitimate proprietor of the suit property. She has exhibited a letter of allocation dated 21/9/2011 from the Town Clerk of the defunct City Council of Nairobi. She has also exhibited copies of various invoices and receipts from the defunct City Council of Nairobi.
5. On her part, the defendant similarly contends that she is the legitimate owner of the suit property. She has exhibited copies of receipts in respect of payments made to Nairobi City County Government (successor to the City Council of Nairobi). She has also exhibited copy of a card dated 20/2/2012 from the Housing Development Department of Nairobi City County.
6. The rival documents presented to the court by the parties to this suit at this stage do not provide conclusive evidence of ownership. It would be necessary to examine internal registers and interrogate evidence from relevant officers from the Nairobi City County. Upon subjecting their evidence to proper scrutiny and testing it through cross-examination, the court will be able to determine the issue of ownership of the suit property. I should observe that a determination of ownership of registered land is a clear exercise. The converse applies to an unregistered land. For the latter, often, courts have to go

through a litany of paperwork and internal records of land allocating entities and hear oral evidence from witnesses before making an informed finding on the issue of ownership.

7. Neither party has deemed it necessary to enjoin the Nairobi City County Government in these proceedings. Both parties claim that the predecessor to the Nairobi City County Government allocated them the plot. In my view, the Nairobi City County Government is a party whose presence before the court is necessary for the effectual and complete adjudication and settlement of the present dispute.

8. Taking into account the foregoing observations, any order made at this stage can only be guided by the principle of balance of convenience and the need to preserve the suit property pending the hearing and final determination of the suit. I accordingly make the following orders in disposing the Plaintiff's Notice of Motion dated 27/10/2015.

- a. There shall be a status quo order to the effect that the suit property shall not be transferred, developed or charged pending the hearing and final determination of this suit.
- b. The plaintiff shall within 30 days from today amend the plaint to enjoin the Nairobi City County Government as a defendant in this suit, to assist the court reach an effectual and complete adjudication and determination of the question of ownership of the suit property.
- c. The amended pleadings shall be served and parties shall complete pretrial requirements within 60 days from today.
- d. This suit shall be mentioned before the Deputy Registrar on 27/9/2017 to confirm compliance with Order 11 of the Civil Procedure Rules.

Dated, signed and delivered at Nairobi on this 14th day of July 2017.

B M EBOSO

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendants

.....Court clerk