



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 89 OF 2012

**JOHN GITHUI GATUA (suing as personal representative
of MICHAEL KABURIA THEURI (Deceased).....PLAINTIFF**

VERSUS

THE COUNTY GOVERNMENT OF TURKANA...1ST DEFENDANT

MEJA LODUNG..... 2ND DEFENDANT

R U L I N G

1. The plaintiff application dated 31/10/2016 seeks an order of injunction to restrain the 1st and 2nd respondents from demolishing or destroying the houses in which the family of **Michael Kaburia Theuri** (Deceased) live on **Plot Nos. 261, 269 and 293** or in any way interfering with the plaintiff's possession and use of the plots pending the hearing and determination of this suit.
2. The plaintiff's case is that he is the administrator of the Estate of Michael Kaburia Theuri who was the proprietor of the suitlands; On the **24th October, 2016**, the 2nd defendant/respondent in the company of armed native Kenya Police Reservists and other persons purporting to be officers of the 1st defendant unlawfully broke into the houses on the said plots and threatened to evict the dependants of the deceased living thereon.
3. It is alleged that the 2nd defendant intimidated the said occupants and threatened to demolish the buildings on the suitlands using a bull dozer and therefore placed "X" marks on the buildings claiming that they are on a road reserve. The defendants are also accused of inciting, with an ethnic bias, members of the public to cause harm to the plots occupants by throwing stones at the houses.
4. On the **25/10/2016** the 2nd defendant and his party visited the premises again and threatened to burn down the houses thereon, and gave a verbal notice to two weeks to the occupants to vacate them. He again visited the premises with his party again on **27/10/2016** and purported to pin a notice on the suit property warning the occupants to vacate within 14 days from **24/10/2016**.
5. The application is opposed. The 1st defendant filed an affidavit sworn by Mark Ewoi on **3/2/2017** in reply. He states that he is the Chief Officer in Charge of Housing Lands and Urban Physical Planning in Turkana County. He denies that the plaintiff is the owner of the suitlands and that those persons who own properties legally in Turkana County have been issued with allotment letters by the County Government. He states that **Plot No. 293** is owned by **Mr. Meja Lodung** and **Plot No. 261** is owned by **Kemuya Ejiye Lokokuta**. He says that even in the event the plaintiff owned the plot, it would not be likely to be at the

place where he has erected a structure as the structure is clearly erected on a road reserve; that there arose need to upgrade the Central Business District and the 1st defendant came up with a Development Plan to upgrade a number of its social amenities, California Market being one of them; After the development plans were put in place, the 1st defendant gave notices to individuals illegally occupying road reserves and individuals who had semi-permanent structures to move to other areas to pave the way for expansion of roads in Lodwar town. The deponent denies that the 1st respondent has colluded with the 2nd defendant to evict the plaintiff, and denies that there has not been any ethnic discrimination in Lodwar. He also raises certain technical objection to the suit relating to the Letters of Administration to the deceased's estate. He avers that the application is aimed at slowing down development in Lodwar.

6. The 2nd respondent has also filed a reply, being the replying affidavit he swore on **17/2/2017**. He avers that the application is *res judicata* as the applicant had filed another application dated **14/2/2012** claiming plot **No. 269** and two other "unknown plots". He avers that his plot is **No. 293** and it does not border **Plot No. 269**. The 2nd defendant avers that the amended plaint specified only one plot and the other two are not identified and that the claim in respect of plot **No. 293** is an afterthought. The 2nd defendant exhibits documents to support his statement that the plot **No. 293** was purchased from one **Esther Mutonyi** who was earlier allocated the plot by the 1st defendant. Later the 2nd defendant was issued an allotment in his name and has been paying rates to the 1st defendant.

7. In response to these replying affidavits the plaintiff has filed a further affidavit sworn on **14/3/2017**. It exhibits two letters of allotment from the now defunct Turkana County Council dated **18/8/1989** and **10/4/1992**. He also exhibits one letter of allotment issued by the Lodwar Municipal Council dated **3/7/2007**. All these are issued in the name of the deceased. The plaintiff states that the 2nd defendant's allotment letter issued on **11/6/2010** for plot **No. 269** is an imitation of the letter issued to the deceased on **3/7/2007**.

8. The plaintiff alleges that the 1st defendant has helped the 2nd defendant to take over the deceased's plot which is **No. 269** and that it has also helped one **Limuya Ejiye Lokolute** to take over plot **No. 261**. Further, the 1st defendant has been altering records of plots owned by the deceased so that they are owned by native Turkana persons. He denies that the deceased's plots were on a road reserve at all. He disputes the veracity of map of Lodwar town exhibited by the 2nd defendant for purposes of showing the position of the structure in which the deceased's family lives and dismisses it as a contrived plan designed to defeat the application and the suit. He states that the development plan of Lodwar Town was done by the Lodwar Municipal Council and the plan was gazetted. He alleges that there is currently occurring illegal re-planning of parts of Lodwar town targeting plots owned by non-Turkana people with a view to displacing and dispossessing them of land.

9. He urges that the Lodwar Municipal Council Development Plans bind the 1st defendant and the exhibited plan is not approved and it seeks to reverse the work of the Ministry of Lands. The plaintiff exhibits as **JGG3(a)** a letter from the Ministry of Lands to the Clerk, Lodwar Municipal Council dated **28/5/2010** stating that a plot whose number is not given, was demarcated and the plaintiff owned it. However the plan attached thereto [**JGG3 (b)**] shows that the plot is in California and it give co-ordinates of the plot. Plot rent receipts marked **JGG4 (a) (b) (c) (d) and (e)** are exhibited by the plaintiff. Two of them have been issued by the County Council of Turkana. Receipt No. **334** and **3333** are for plot rents from **1985 – 1992**. They were issued on **20/1/1992**. Receipts **No. 19903**, (for plot rent from **1992 – 2001**) **No. 5419** (for plot rent from **2008-2010**) and **No. 9605** (for plot rent from **2002 – 2007**) are issued by the Municipal Council of Lodwar.

10. Going by the documentation annexed by the plaintiff to his affidavit and the absence of a sufficient rebuttal at this interlocutory stage by the 1st defendant, and bearing in mind that the second defendant is an individual who would rely on an allocation just as the plaintiff or the deceased would, I believe that the plaintiff has established a *prima facie* case. There must be good explanation for all that documentation which will be explored at the hearing of the main suit. For now it suffices to note that the plaintiff has demonstrated that he has a *prima facie* case and to preserve the *status quo* there is need for orders to be

made. I therefore grant **prayers No. 3 and 4** of the Notice of Motion dated **31/10/2016**. The costs of the application shall be costs in the cause.

Dated, signed and delivered at Kitale on this 24th day of August, 2017.

MWANGI NJOROGE

JUDGE

24/8/2017

Before - Mwangi Njoroge Judge

Court Assistant – Isabellah/Picoty

N/A for the parties

COURT

Ruling delivered in open court in the absence of the parties who had been notified.

MWANGI NJOROGE

JUDGE

24/8/2017