



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 633 of 2015

KENYA RAILWAYS CORPORATION.....PLAINTIFF/APPLICANT

=VERSUS=

ADAN INTALO ALI

ADAN IBRAHIM HASSAN.....DEFENDANTS/RESPONDENTS

AND

CHIEF LAND REGISTRAR.....INTERESTED PARTY

RULING.

1. The Plaintiff/Applicant filed a Notice of Motion dated 6th July 2015, in which it sought an injunction against the Defendant/Respondents from in any way interfering with a property currently known as LR No.209/6228 (suitland). The Applicant contends that the suit land had been set aside for its predecessor the East African Railway and Harbours Administration way back in the 1960's. The Applicant later learnt that the suit land had been allotted to the Respondents by the Commissioner of Lands vide letter of offer dated 25th August 1998 which offer was accepted eight (8) years later .
2. The Applicant had constructed structures on the suitland which it leased out to tenants who are paying it rent. Despite the suit land belonging to the Applicant which is in possession, the Commissioner of Lands without any consent from the Applicant issued Grant to the Respondents on 5th March 2007. The Applicants then moved to Milimani Chief Magistrates Court where they filed a suit against the Applicant claiming that the suitland had been invaded by strangers in 2007, which was not the case.
3. The Respondents tried to negotiate for a lease of the suitland from the applicant but they later reneged on the negotiations. The Applicants contends that the suit land was not available for allocation and that the respondents are aware of this fact as they have never been in possession of the suitland.
4. The respondents opposed the applicant's application dated 18th August 2015, through a replying affidavit sworn on the same date as well as a supplementary affidavit sworn on 5th October 2015. The Respondents contend that they are the registered owners of the suitland and that their title cannot be challenged by the applicant which has no claim to it. That the Ministry of lands has confirmed that they are the registered owners of the suitland.
5. I have carefully considered the applicants application as well as the opposition to the same by the

Respondents. I have also considered the submissions by the parties. This being an application for injunction, I am obliged to determine whether the applicant has established a prima facie case to warrant issuance of injunctive orders. A prima facie case was defined in the case of **Mrao –Vs- First American Bank of Kenya Limited and 2 others (2003) KLR 125** as follows:-

“a prima facie case in a civil application includes but is not confined to a “genuine and arguable case” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.

6. In the instant case, there is no contention that the applicant is the successor of the defunct East African Railways and Harbours Administration. The East African Railways and Harbours Administration was given the lands which it used to occupy and those reserved for its activities. Those lands included the suitland which was off Kitui Road at industrial area in Nairobi. In 1986 vide Legal Notice No.24 of 1986 the then Minister for Transport and Communication vested the land in issue among others upon the applicant. The relevant notices have been annexed to the applicant’s application.

7. A portion of the applicant’s land which measures 0.9722 hectares which is the suit land is the one the applicant is litigating on. The respondents had on 7th May 2009 applied to the applicant to be allowed to lease the suitland for a period of 50 years to enable them build a factory on it. This is despite the fact that they had already been given a lease over the same property by the Commissioner of Lands. It is therefore clear that the respondents were aware that the land belonged to the applicant despite them having been issued with a lease over the same. I find that on the material presented before the court, the applicant has established a prima facie case with probability of success. The purpose of an injunction is to preserve the subject matter of the suit until the dispute is resolved. At interlocutory stage, it is not fair for the Court to delve into the issue of who is the owner. As long as the Applicant has demonstrated that it has a prima facie case, an injunction ought to issue. I find that the Applicant’s application is well merited. I allow the same in terms of prayers three (3) and four (4).

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **28th** day of **September, 2017**.

E. O. OBAGA

JUDGE

In the presence of :

Mr Ochieng for Mr Obok for applicant

M/s Ndago for Mr Nyawara for respondents

Court Assistant: Hilda

E.O.OBAGA

JUDGE