



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC. CASE NO. 235 OF 2017**

**CHRISTINE MUTHONI KIAMA.....PLAINTIFF**

**VERSUS**

**THE CABINET SECRETARY, MINISTRY OF INTERIOR &**

**COORDINATION OF NATIONAL GOVERNMENT.....1<sup>ST</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT**

**NAIROBI CITY WATER & SEWERAGE COMPANY LIMITED....3<sup>RD</sup> DEFENDANT**

**RULING**

Through the application dated 5/4/2017, the Plaintiff seeks an order of injunction to restrain the 1<sup>st</sup> and 3<sup>rd</sup> Defendants from dealing, developing, transferring, or in any way interfering with plot number 1082 under the Soweto Resettlement Scheme (“the Suit Property”). The Plaintiff also seeks that the Cabinet Secretary, Ministry of Interior and Coordination of National Government through the Deputy County Commissioner, Embakasi Sub-county supervises the Nairobi City Water and Company Sewerage Ltd as it is compelled to close and bar the use of the pour flash toilets erected on the Suit Property pending the hearing and determination of this suit.

The Plaintiff was allocated the Suit Property through a letter of allotment issued by the Housing Development of the Nairobi City County and has been paying the annual rates dutifully. The Suit Property borders the Chief’s office at Kayole Soweto, a settlement situated in Embakasi Division. The Plaintiff claims that the 1<sup>st</sup> Defendant through the Deputy County Commissioner, Embakasi Sub-County and the area Chief Kayole Soweto has encroached onto and trespassed on the Suit Property and fenced it, and that they are continuing to develop it.

Further that under the auspices of the Water and Sanitation Services Improvement Programme financed by the World Bank Group, the 3<sup>rd</sup> Defendant has illegally erected a pour flash toilet on the Suit Property without the Plaintiff’s authority. The Plaintiff claims that she continues to suffer loss of opportunity to develop the Suit Property and that she stands to suffer greatly as land in that particular settlement is unavailable and expensive hence she cannot be adequately compensated by damages. The application is supported by the Plaintiff’s affidavit in which she admits at paragraph 15 that a pour flash toilet has already been erected on the Suit Property and is in use. She did not annex any title documents save for the card issued by the Nairobi City Council Housing Development Department.

The 3<sup>rd</sup> Defendant opposed the application and relied on the replying affidavit of its Resident Engineer. The Defendant argues that the Plaintiff previously instituted a suit against the local community leaders being **Milimani CMCCC 682 of 2010** over the ownership of the suit plot and that the case was dismissed. The 3<sup>rd</sup> Defendant maintains that the Suit Property is owned by the Chief’s Office and that it has been developed through the initiative of the community. The 3<sup>rd</sup> Defendant claims that the Suit Property is Government land. It is stated that the Chief’s Office has been there since 2007. The Defendant argues that if the pour toilets are closed members of the public will suffer greatly and that they will be exposed to challenges pertaining to good hygiene and proper sanitation. The 3<sup>rd</sup> Defendant argues that closing the public toilet will be against public interest.

The court has considered the application, the affidavit and the submissions of the counsel. The court is of the view that granting the orders for the public toilet to be closed would not be in the best public interest and the common good of the community living in that area. Members of the public who go to seek services from the Chief's Office will be greatly inconvenienced if the pour flush toilets are closed. The public interest in maintaining the public toilets open for use by members of the public who require such sanitary facilities far outweighs the Plaintiff's personal interest in developing the Suit Property. The Plaintiff can be compensated by an award of damages.

The court declines to grant the application and directs the parties to set down the suit for hearing when a determination as to who owns the Suit Property can be made. Costs will be in the cause.

Dated and delivered at Nairobi this 25<sup>th</sup> day of September 2017.

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Mburu for the Plaintiff

No appearance for the Defendant

Mr. V. Owuor- Court Assistant