



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

CIVIL SUIT NO. ELC 313 OF 2008

EDWARD MUNGAI MBURU.....1ST PLAINTIFF

RABOY SIMON MWANGI.....2ND PLAINTIFF

JOSEPH MWANGI KIMANI.....3RD PLAINTIFF

TERESIAH KINYUA.....4TH PLAINTIFF

(Suing in their capacity as officials of

Alfajiri Self Help Group)

VERSUS

SAUTI SACCO LIMITED.....1ST DEFENDANT

DISTRICT COMMISSIONER, MAKADARA...2ND DEFENDANT

DISTRICT COMMISSIONER, EMBAKASI...3RD DEFENDANT

THE CITY COUNCIL OF NAIROBI.....4TH DEFENDANT

AMOS NGATA KAMAU.....5TH DEFENDANT

SAMMY KARIUKI.....6TH DEFENDANT

FRANCIS LAPANDO.....7TH DEFENDANT

STANSILUS WAMBUA.....8TH DEFENDANT

RULING

Through the application dated 8/5/2017, the 1st Defendant seeks to have the interim orders issued on 17/9/2008 discharged or vacated. Alternatively, it seeks to have the suit dismissed with costs to the 1st Defendant.

Parties recorded a consent in court on 17/9/2008 in the following terms:

“That both parties do keep away from the suit land pending the hearing and determination of this

application or until further orders of the court.”

The application is premised on the grounds that the above order was in relation to Nairobi/Block 82/4264 (“the Suit Property”) yet at the time the order was made this parcel of land had ceased to exist following the subdivision in 2007 that resulted in the creation of Nairobi Block 82/8759 and Nairobi Block 82/8760. Nairobi Block 82/8759 was transferred to Greenspan Investments Ltd which is not a party to the suit.

The 1st Defendant is apprehensive that Nairobi Block 82/8760 may be invaded by squatters and therefore wishes to fence it and deploy security guards to safeguard this property. The Defendant is unable to access this land owing to the interim orders issued on 17/9/2008.

The 1st Defendant further argues that the Plaintiffs have not taken any steps to prosecute this case and that the delay greatly prejudices the 1st Defendant.

The other point taken up is that the Plaintiffs lodged a complaint before the National Land Commission which sought similar reliefs to those in the plaint before this court. The National Land Commission delivered a decision in which it found that Nairobi Block 82/8760 belongs to the 1st Defendant and thereby dismissed the Plaintiff’s claim.

The application is supported the affidavit of David Elly Ndwiga in which he deponed to the threats of invasion caused by the squatters. He annexed a copy of the court order obtained by Savanaland Self Help Group in **ELC No. 1390 of 2016** on 24/1/2017 restraining the Nairobi City County from interfering with the Plaintiffs’ quiet possession of the land known as Nairobi/Block 82/8762/1- Dolnhom. The Defendant wishes to fence the Suit Property and deploy security guards to safeguard the property from invasion.

The Plaintiffs opposed the application. The 4th Plaintiff admits at paragraph 9 of her replying affidavit that she is aware about the threats of invasion of the Suit Property but she denies that this is sufficient justification to vacate the consent order in the absence of the Plaintiffs’ express consent. The Plaintiffs contend that that consent can only be vacated by consent. On the issue of the National Land Commission (NLC), the Plaintiffs urge that NLC’s decision does not stand in law and that since NLC is a witness in these proceedings National Land Commission could not pronounce the rightful owner L. R. No. Nairobi/Block 82/8760.

The court is of the view that it is necessary to preserve the Suit Property in light of the real threat which is not denied by the Plaintiffs. The court allows the 1st Defendant to fence the land and deploy security guards to safeguard the Suit Property.

The 1st Defendant submitted that since the Plaintiffs were the ones who lodged the complaint with the National Land Commission and National Land Commission made a determination there is nothing left for this court to determine.

Under Section 14 of the National Land Commission Act, NLC was granted the power to review all grants or dispositions of public land to establish their propriety or legality. Where NLC finds that the title was acquired in an unlawful manner, it can direct the Registrar to revoke the title. Where the title was irregularly acquired, NLC is to take appropriate steps to regularise it.

The dispute over the Suit Property is that the Plaintiffs were allocated the Suit Property by the City Council of Nairobi while the 1st Defendants were allocated the same land by the Commissioner of Lands.

This suit was filed on 3/7/2008. Under Order 17 Rule 2 (1) of the Civil Procedure Rules the court has the discretion to dismiss a suit where a party has not taken steps in the case for one year. The court directs that Plaintiff to set down this suit for hearing forthwith so that the issues in dispute can be determined once and for all.

The application dated 8/5/2017 is allowed in terms of the order made above. Each party will bear its own

costs.

Dated and delivered at Nairobi this 25th day of September 2017.

K. BOR

JUDGE

In the presence of: -

Mr. Mboya for the Plaintiff

Ms. Nyaga for the 1st Defendant

Mr. V. Owuor- Court Assistant