



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE NO. 240 OF 2017

ROSE WANJA WAMUTI PLAINTIFF

VERSUS

DORCAS NJERI NJIHIA DEFENDANT

RULING

(An application for injunction to restrain the defendant from dealing with the suit property; application allowed)

1. What is before the court for determination is plaintiff's Notice of Motion dated 29th May 2017. The application is brought under Order 40 rules 1, 2, 3, 4 & 5 and Order 51 of the Civil Procedure Rules 2010. The orders sought are:

1. (Spent).

2. That pending the hearing and determination of this suit the Defendant/Respondent herein be restrained from any dealings whatsoever with the suit parcel of land to wit Title No. KIJABE/KIJABE BLOCK 1/6003.

3. That pending the hearing and determination of this suit, the premises known as KIJABE/KIJABE BLOCK 1/6003 be preserved and not be subdivided, sold, charged or transferred or dealt with in any manner howsoever by the Defendant/Respondent herself, her agents and/or servants until further Orders of the court.

4. That pending the hearing and determination of this suit, the Defendant/Respondent herein be compelled to vacate the suit premises.

5. That there be such other or further relief as this court may deem fair and expedient to grant in the circumstances.

6. That costs of this application be provided for.

2. The application is supported by an affidavit sworn by the plaintiff. She deposed that she is the registered proprietor of all that parcel of land known as Kijabe/Kijabe Block 1/6003. She has annexed a copy of the title deed which shows that she became registered proprietor on 27th April 2011. She further deposes that the defendant encroached on her land and erected a structure thereon. That despite reporting the matter to the police and local administration and despite issuing a demand letter, the defendant has failed to vacate.

3. When the application came up for inter parte hearing, there was proof that the defendant was served. The defendant did not file any response to the application and did not also attend the inter parte hearing. In those circumstances, the plaintiff urged the court to allow the application as it is unopposed.

4. I have considered the application. In such an application, the applicant must establish a prima facie case with a probability of success. Even where a prima facie case is established the applicant must satisfy the court that she would suffer irreparable damage if an injunction is not granted. Finally, if the court is in doubt as to whether the first two tests have been satisfied, the court can decide the matter on a balance of probabilities.

5. From the material placed before the court, there is proof that the plaintiff is the registered proprietor of Kijabe/Kijabe Block 1/6003. The plaintiff's complaints about the defendant encroaching upon the property and carrying out a construction are unchallenged and are thus proven on a balance of probabilities. In view of the unique nature of land as an asset, damages will not adequately compensate the plaintiff since construction may change the nature of the land in a permanent way.

6. In the circumstances, I find that the plaintiff has established a prima facie case with a probability of success. She stands the risk of suffering irreparable damage if an injunction is not granted. I note that the plaintiff has sought an order that the defendant be compelled to vacate the suit premises. I am not minded to grant an order that may ultimately amount to an eviction order at this stage. The issue of vacant possession should be considered at the hearing of the main suit. In the end, I make the following orders:

a. The defendant/respondent herein, her agents and/or servants are hereby restrained from any dealings whatsoever with the suit parcel of land known as title No. KIJABE/KIJABE BLOCK 1/6003 pending the hearing and determination of this suit

b. Pending the hearing and determination of this suit, the premises known as KIJABE/KIJABE BLOCK 1/6003 be preserved and not be subdivided, sold, charged or transferred or dealt with in any manner howsoever by the defendant/respondent herself, her agents and/or servants until further Orders of the court

c. Costs to the plaintiff.

Dated, signed and delivered in open court at Nakuru this 12th day of October 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Ms. Oseko holding brief for Mr. Masese for the plaintiff/applicant

No appearance for the defendants/respondents

Court Assistant: Gichaba