



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT

AT MILIMANI

LAND CASE NO. 138 OF 2017

EPHANTUS MUGO.....1ST PLAINTIFF

KAUTHAR MARIAM.....2ND PLAINTIFF

=VERSUS=

DAKANE ABDULLAHI ALI.....1ST DEFENDANT

NORTHERN CONSTRUCTION LIMITED...2ND DEFENDANT

NATIONAL LAND COMMISSION.....3RD DEFENDANT

NAIROBI COUNTY GOVERNMENT.....4TH DEFENDANT

RULING

1. The applicants are members of Starehe Community where Racecourse Primary School is located. LR No. 209/16441 (suit land) which is now registered in the name of the first respondent was part of the land where the school is located. The suitland had been earmarked for the school when the process of acquisition of title for the school began. However before the title could be processed, part of the school's land was registered in the name of the first respondent.

2. The Registrar of titles revoked the title deed by the first respondent vide a Gazette Notice in the year 2010. The acquisition of the title by the first respondent to the suit property has been a subject of investigation and parties involved have been charged in the Anti-Corruption Court. The applicants are therefore seeking injunction to protect the suit property from being transferred.

3. The second respondent has opposed the applicant's application based on grounds of opposition dated 20.3.2017 and replying affidavit sworn on 23rd April 2017. The second respondent contends that the application by the applicants is misconceived as the second respondent is on the suit property based on its relationship with Racecourse primary School which is a tenant/landlord relationship and that that relationship is protected and the second respondent can only move out upon being given adequate notice to do so.

4. The first respondent has opposed the applicant's application based on a replying affidavit sworn on 26th May 2017 in which he contends that the applicants application has been overtaken by events in that he has since surrendered the title to the suit land to the County Government of Nairobi and therefore there

is no cause of action against him.

5. The fourth defendant has opposed the applicant's application based on replying affidavit sworn on 4th October 2017. The fourth respondent contends that the applicant's application is misconceived as they lack locus standi. That the issue in this case can be sorted out administratively and that Racecourse Primary School is in a better position to give clear facts which can assist this Court.

6. I have considered the applicants application and the opposition thereto by the first and second respondent. This is one of the disturbing cases where property belonging to public institutions are grabbed with impunity. The second applicant moved its construction material to the suit property when it was constructing a road near the suit property. That road has since been completed but the second respondent is still on the property. Though I do not know the relationship between the first respondent and the second respondent, it is during the occupancy of the second respondent on the suit property that the first respondent acquired the same.

7. The first respondent has tried to hold on to the illegally acquired title despite efforts to wrest it from him. It would appear that he surrendered the title after being charged in court. There have been other proceedings touching on the same suit property at least from the record in this file. The purpose of an injunction is to preserve the subject matter of the suit. The applicants have demonstrated that they have a prima facie case with probability of success. The fact that the first applicant has surrendered the title does not mean that an injunction should not be given to preserve the property. I therefore find that the applicant's application has merit. I allow it in terms of prayers two (2) and five (5) of the Notice of Motion dated 22nd February 2017.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 22nd day of November 2017.

E.O.OBAGA

JUDGE

In the absence of parties who were aware of the time and date of delivery of Ruling.

Court Assistant: Hilda

E.O.OBAGA

JUDGE