



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. SUIT NO. 342 OF 2017

GODFREY MUHURI MUCHIRI.....1ST PLAINTIFF

MARY WAMBUI MUCHIRI.....2ND PLAINTIFF

MARTIN NDEGWA.....3RD PLAINTIFF

MERCY WANJIKU.....4TH PLAINTIFF

TABITHA NJOKI NGIGI.....5TH PLAINTIFF

VERSUS

EMBAKASI RANCHING COMPANY LIMITED.....1ST DEFENDANT

SAMWEL MWANGI THUITA.....2ND DEFENDANT

RULING

The Plaintiffs seek a temporary injunction to restrain the Defendants from evicting the Plaintiffs, selling, trespassing, alienating, damaging, constructing or destroying or in any manner interfering with the development upon the Plaintiff's plot numbers V15609, V11012, V14302, V14775, V2244 and V14107 ("the Suit Properties") situated in Kahuhu area, Embakasi Ranching Company Ltd Ruai Farm in Nairobi Block 105 pending hearing and determination of this suit.

The Plaintiffs' application dated 23/5/2017 is supported by the 1st Plaintiff's Affidavit sworn on 23/5/2017. The Plaintiffs claim they are the owners of the Suit Properties by virtue of the allotments by the Defendant and that they hold non-member certificate of plot ownerships issued by the 1st Defendant. The Plaintiffs own the Suit Properties which are adjoining and fenced by a common fence. The Plaintiffs claim to have duly paid the requisite sums of money to the 1st Defendant. The Plaintiffs had quiet possession of the Suit Properties until 22/5/2017 when they claim the Defendants trespassed onto the Suit Properties after unlawfully bringing down their security fence. The Plaintiffs reported the incident to Mawe Mbili Police Post but did not receive any assistance from the police. The Plaintiffs contend that the 1st Defendant has refused to issue titles to them despite allocating the Suit Properties to the Plaintiffs.

The Plaintiffs maintain that the Defendants are notorious for double allocation of plots to its members and non-members, a fact which the court ought to take judicial notice of. The Plaintiffs claim that the Defendants actions of demolishing their fence were actuated by malice, odium and contempt for the Plaintiffs. The Plaintiffs annexed copies of the plot ownership certificates for Suit Properties issued by the 1st Defendant. They also annexed photographs showing the fence which was demolished.

The Defendants opposed the application. They contend that the Plaintiffs are in breach of the 1st Defendants directions requiring plot owners who wish to develop their plots to notify the 1st Defendants office before commencing construction to avoid litigation among the shareholders. The 1st Defendant claims to have issued a notice on 5/2/2015 in the *Daily Nation* which the Plaintiffs failed to comply with. The 1st Defendant admits moving into the Suit Properties arguing that it did so to clear the illegal structures put up without it being notified. The Defendants admit that the Plaintiffs are shareholders of 1st Defendant and they own a number of parcels of land but they contend that the Plaintiffs developed the Suit Properties contrary to the directives of the 1st Defendant without notification. The 1st Defendant claims it is in the process of issuing titles to its shareholders and states that the Plaintiffs will be required to make relevant applications for titles.

The Plaintiffs contend that they were allocated the Suit Properties prior to 2015 when the 1st Defendant issued the notice to its shareholders. They claim to have been in occupation since the time they were allocated the Suit Properties.

The 1st Defendant contends that it has had a problem with its land and that has been sued in numerous suits. This prompted the 1st Defendant to issue the notice which was carried in the *Daily Nation* in 2015 requiring the shareholders to notify the 1st Defendant before commencing development so that the 1st Defendant can confirm that they are not building on someone else's land. The Defendants claim that the Plaintiffs failed to notify the Defendants of their intention to start developing the Suit Properties and went ahead to put up the fence which the Defendants caused to be demolished.

Further, the Defendants contend that the Plaintiffs did not seek approval from the 1st Defendant and the County Government as required by law. The Defendant concedes that the issue of ownership of the Suit Properties is not contested but that they require a surveyor to point out the exact location of the Plaintiffs plots. According to the Defendants, they issued the notice to ensure there was order in the area.

The issue the court has to determine is whether the Plaintiffs have demonstrated that they have a *prima facie* case against the Defendants and whether they will suffer irreparable damage which cannot be compensated by an award of damages if the orders sought are not granted.

The court finds that the Plaintiffs have a *prima facie* case against the Defendants who concede that the Plaintiffs own the Suit Properties. The court grants an injunction to restrain the Defendants from evicting the Plaintiffs, selling, trespassing, alienating, damaging, constructing or destroying or in any manner interfering with the Plaintiffs' development on the Suit Properties pending hearing of the suit. The Plaintiffs are awarded the costs of this application.

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

K. BOR

JUDGE

In the presence of: -

No appearance for the Plaintiffs

Mr. Ayora for the Defendants

Mr. V. Owuor- Court Assistant