



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT MILIMANI
LAND CASE NO. 896 OF 2015

OLOOLUA HOLDINGS LTD.....PLAINTIFF

=VERSUS=

NAIROBI CITY COUNTY1ST DEFENDANT

LOISE NYANGUTHII MURIITHI &

PAUL MUHORO MURIITHI2ND DEFENDANT

GAIL ADHIAMBO GUMBA.....3RD DEFENDANT

WINNIE ATIENO OPUCH.....4TH DEFENDANT

STEPHEN NDIRANGU KAMAMIA.....5TH DEFENDANT

JOHN WANJOHI NDIRANGU.....6TH DEFENDANT

MARYANN WANJA NDIRANGU.....7TH DEFENDANT

SHERRY AYUGI.....8TH DEFENDANT

RULING

1. The applicant filed a Notice of Motion dated 18th September 2015 in which it seeks injunctive orders against the respondents restraining them from constructing, selling, transferring charging or otherwise in any manner interfering with parcel numbers LR No. 209/ 6989/ 158, 159,160,161,162,163,164 and 165.
2. The applicant contends that the above mentioned parcels which I shall hereinafter refer as to suit properties were a result of subdivision of LR No. 209/6989/158 which was registered in its name but which the first respondent illegally subdivided and allocated to the second to eight respondents. The second to eight respondents who were served by way of substituted service never entered appearance. They did not file any papers in opposition to the application.
3. The applicant contends that it purchased the property which resulted into the suit properties from Plain Land Survey Ltd. The applicant then applied for approval of building plans from the first respondent which plans were duly approved. The applicant even applied for licence from National Environment

Management Authority which was granted. When the applicant moved to the ground to start construction, it found some persons who were constructing on the same. A search was done which revealed that the property had been subdivided and allocated to the second to eight respondents. Some respondents had started construction on the suit properties. Efforts to stop them from construction by the applicant were never heeded.

4. The applicant contends that it has been paying rates for the property and does not understand how its property was subdivided and given to the second to eight respondents. It is on this basis that it seeks an injunction as prayed for in the application.

5. The first respondent has opposed the applicant's application based on grounds of opposition dated 6th April 2017. The first respondent contends that the applicant irregularly purchased the property in issue from Plain Land Survey Ltd. That it had leased the property to Plain Land Survey Ltd for a period of 99 years. That it was a term of the lease that if the lessee was to transfer the leasehold to a third party its consent had to be obtained. That no such consent was obtained and therefore the subdivision and allocation of the suit properties to the second and eight respondents was in order.

6. I have carefully considered the applicant's application as well as the opposition to the same by the first respondent. This being an application for injunction, the applicant is expected to meet the threshold in the case of **Giella Vs Cassman Brown & Co.Ltd (1973) EA 358**. First an applicant must demonstrate that he has a prima facie case with probability of success. Secondly, an injunction will not normally be given unless otherwise the applicant might otherwise suffer loss which will not be adequately compensated in damages. Thirdly if the court is in doubt, it will decide the application on a balance of convenience.

7. A prima facie case was described in the case of **Mrao –Vs- First American Bank of Kenya Limited and 2 others (2003) KLR 125** as follows:-

“a prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.

8. In the instant case, there is no contention that the suit properties were as a result of subdivision of a property which was held by the applicant. The applicant had purchased the same from Plain Land Survey Ltd. The property had been leased to Plain Land Survey Ltd by the first Respondent. The applicant had obtained approval for building on the property. The applicant was the one paying rates. It is clear that the applicant's right has been infringed and it calls for an explanation from the respondents. To this extent, I find that the applicant has demonstrated that it has a prima facie case with probability of success. It has been held that a prima facie case is not one which will necessarily succeed.

9. The second to eight respondents did not file any replying papers. It is therefore impossible to determine whether they are capable of meeting any damages if this were to be considered. Even the balance of convenience cannot be in their favour when they are not even known. I therefore find that the applicant's application is well merited. I allow the same in terms of prayer three (3) and four (4). There is no need for an order for security for costs in the circumstances.

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