



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 12 OF 2017

NEW NYONJORO FARMERS CO. LTD.PLAINTIFF

VERSUS

WANYORORO DAIRIES CO-OPERATIVE LTD.....DEFENDANT

RULING

(An application for injunction to restrain the defendant from carrying out construction on suit property; application allowed)

1. By Amended Notice of Motion dated 15th February 2017, the plaintiff seeks the following orders:

a) Spent.

b) Spent.

c) Spent.

d) A temporary Order of injunction be issued against the defendant by himself his agents or servants restraining them from further construction or dropping new building materials on LR. No. Dundori/Lanet Block 4/122 till this suit is heard and decided.

e) Costs of this application be provided for.

2. The application is an amended version of an earlier Notice of Motion dated 16th January 2017. The application was supported by an affidavit sworn by Sylvester Kimani Gitau, the chairman of the plaintiff company. He deposed that the plaintiff is the registered proprietor of the parcel of land known as Dundori/Lanet Block 4/122 (Nyonjoro). He accuses the defendant of entering into the suit property and constructing a stone structure without the consent of the plaintiff and refusing to comply with the plaintiff's demands that it stops the construction and removes the construction material. He annexed a copy of Certificate of Official Search as at 1st November 2016.

3. The defendant responded to the application through a replying affidavit sworn by its chairman Francis Waweru Wanjema. He deposed that the suit property is a public utility belonging to the County Government of Nakuru and that the said county government allowed the defendant to use the property for its dairy business. He annexed a copy of a letter dated 22nd October 2015 from Hon. Samuel M. Kamau, Member of Nakuru County Assembly, minutes of a meeting of the defendant's board of directors held on 16th March 2015 and minutes of a meeting of Nyonjoro residents and the Ministry of Livestock and Agriculture held on 21st March 2015 among others.

4. The application was argued by written submissions. Plaintiff's submissions were filed on 7th July 2017 while the defendant's submissions were filed on 21st June 2017. I have considered the application, the affidavits and the submissions filed by both parties. For an application for an interlocutory injunction to succeed, the applicant must establish a *prima facie* case with a probability of success and also show that he will suffer irreparable damage if the injunction is not granted. If the court is in doubt as to whether a *prima facie* case has been established, then it should decide the case on a balance of convenience. If no *prima facie* is established, then the application ought to be dismissed without any need to look into the other two tests.

5. The plaintiff claims to be the proprietor of the suit property. I have perused the copy of the certificate of official search which the plaintiff has annexed. It is dated 1st November 2016 and shows that New Nyonjoro Farmers Company Limited became the registered proprietor of the suit property on 22nd January 1999 and was issued with a title deed on that date. The plaintiff did not annex a copy of the title document. It would have been good to do so. Nevertheless, the defendant's only challenge to the plaintiff's ownership is that the suit property is a public utility and that it was allocated to the defendant by the County Government of Nakuru. No document is exhibited to support the allegation that the property is owned by the County Government of Nakuru or that it is a public utility. The annexed letter from a Member of the Nakuru County Assembly cannot be said to be an official position of the said County government. Even if it were, it would still not suffice in the absence of documents showing ownership by the County government.

6. From the material placed before the court, it is clear that a title deed in respect of the suit property was issued to the plaintiff. As registered proprietor, the plaintiff is entitled to the rights and privileges provided under Sections 24, 25 and 26 of the Land Registration Act. I am therefore satisfied that the plaintiff has established a *prima facie* case with a probability of success. I do not think damages can adequately compensate the plaintiff.

7. In the end, I make the following orders:

a) I grant an injunction restraining the defendant by itself, its agents or servants from carrying out further construction or dropping new building materials on LR. No. Dundori/Lanet Block 4/122 pending hearing and determination of this suit.

b) Costs to the plaintiff.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 15th day of December 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Makau holding brief for Mr. Kimatta for the plaintiff/applicant

No appearance for the defendant

Court Assistant: Gichaba