



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 232 OF 2015

MARGARET WAIRIMU NGUGI & 3 OTHERS.....PLAINTIFFS

VERSUS

SAMUEL NDUNGU MUNYIRI & ANOTHER.....DEFENDANTS

RULING

(Application for injunction; application unopposed; plaintiffs being owners of suit property; defendants not having demonstrated any right to be on it; prima facie case established; application allowed)

1. The plaintiffs in this suit are the officials of Wamagata Squatters Self Help Group. They have therefore brought this suit on their own behalf and on behalf of the members of the Self Help Group. It is their case that Wamagata Self Help Group is the owner of the land parcel Nakuru Municipality Block 16/835 and they have demonstrated a title deed drawn in their favour. Despite being owners, it is their case that the defendants have entered into their land and are proposing to erect structures on it.

The suit was filed on 12th August 2015 and together with the suit, the plaintiffs filed an application for injunction dated 11th August 2015 which is the subject of this ruling, seeking orders to have the defendants restrained from the suit property pending hearing and determination of this suit.

2. Despite being served with summons and with the application, the defendants have not entered appearance and have not filed any response to oppose the application.

3. The application is for injunction and I stand guided by the principles laid down in the case of ***Giella vs Cassman Brown (1973) EA 358***. In the said case, it was held that to succeed in an application for injunction, one needs to demonstrate a prima facie and also show that he stands to suffer irreparable loss. If in doubt, the court will assess the application on a balance of convenience.

4. I have seen the title deed displayed by the plaintiffs. It shows that Wamagata Self Help Group owns the suit property. The defendants have not filed anything to show that they are entitled to be on the suit land. I am therefore of the view that the plaintiffs have demonstrated a prima facie case with a probability of success.

5. They deserve to be in use and occupation of the suit property and the defendants must stay out of it

pending hearing and determination of this case. If the defendants are in occupation, I direct that they vacate the suit premises forthwith.

6. The plaintiff shall also have costs of this application.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 20th January, 2016.

MUNYAO SILA

JUDGE

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In presence of:-

Mr F K Maina holding brief for M/s Ikua Mwangi & Company for plaintiffs/applicants

Defendant: absent

CA: Janet

MUNYAO SILA

JUDGE

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