



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 165 OF 2015

DR.SZUMBAH MWANAONGORO & 8 OTHERS.....PLAINTIFFS

VERSUS

NATIONAL LAND COMMISSION.....1ST DEFENDANT

HON. ATTONERY GENERAL.....2ND DEFENDANT

RULING

(Application for injunction; plaintiffs having titles to land with houses; National Land Commission threatening to demolish the same; plaintiffs seeking injunction pending hearing of their suit; no response by the National Land Commission; plaintiffs have titles and have a prima facie case; application allowed)

1. This suit was commenced on 11 June 2015. The 9 plaintiffs have pleaded that they are the registered proprietors of the land parcels Nakuru Municipality Block 12/ 281, 269, 278, 274, 275, 271, 279, 273, and 270 respectively. They aver that the said properties were transferred to them arising from a sale and transfer executed in their favour by the now defunct Municipal Council of Nakuru. They state that they then became registered as proprietors and have been paying rates and rent to the County Government of Nakuru. It is their case that on 20 May 2015, the National Land Commission, the 1st defendant, in a directive which was published in one of the Daily Newspapers, issued a two weeks notice and threatened to demolish the suit properties alleging that they were set aside for Moi Primary School, Nakuru. The plaintiffs state that the suit properties are the subject matter in Nakuru Judicial Review No. 3 of 2011 vide which the plaintiffs challenged an order revoking their titles purporting that the same are reserved for the said primary school. In this suit, the plaintiffs are seeking orders of a declaration that they are entitled to peaceful possession of the suit properties as registered owners; a declaration that the directive published in page 20 of the Daily Nation newspaper of 20 May 2015 is ultra vires, thus null and void; a permanent injunction restraining the defendants from claiming the land or demolishing the structures therein on the strength of the said directive; costs and interest.

2. Together with the suit, the plaintiffs filed an application for injunction vide which they sought to have the defendants restrained from demolishing or interfering with the suit properties pending hearing of this suit. In the supporting affidavit which has been sworn by John Kuria Gitu, the 2nd applicant, the applicants have annexed copies of their title deeds and stated that they purchased the properties after the Municipal Council of Nakuru resolved to sell them so as to offset a debt owed to the National Assurance Company. They annexed various documents to demonstrate this.

3. The respondents despite being served, have not entered appearance nor filed any document to oppose this application. The only material I have before me is that tendered by the plaintiffs. I can see that the plaintiffs have title deeds to the suit properties. Without anything to contest the ownership of the plaintiffs of the suit properties, I am of the view that they have demonstrated a prima facie case. They no doubt stand to suffer irreparably if the suit properties are demolished as threatened.

4. I therefore allow this application. I order the respondents not to proceed with any demolition or interference of the suit properties in any way until this suit is heard and determined. The plaintiffs shall have the costs of this application.

5. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 10th day of March, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of: -

Mr. Kahigah for plaintiffs/applicants

Mr. Wachira Nguyo for defendants/respondents

CA: Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU