



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU

ELC NO. 268 OF 2016

NDIRANGU NJENGA1ST PLAINTIFF

GATIMU NJENGA2ND PLAINTIFF

VERSUS

NAKURU COUNTY GOVERNMENT.....1ST DEFENDANT

MICHAEL OJWANG.....2ND DEFENDANT

JOSEPH MWANGI.....3RD DEFENDANT

JORDAN SELFHELP GROUP

(THROUGH ITS OFFICIALS PETER IRUNGU AND STEPHEN NJANG'ARA).....4TH
DEFENDANT

RULING

(Application for injunction; application not opposed and one party allowing the same; application allowed)

1. This suit was commenced by way of plaint filed on 21 July 2016. The plaintiffs have pleaded that they are the registered proprietors of the land parcel Nakuru Municipality Block 21/79 (hereinafter described as the suit land). It is pleaded that the defendants have forcefully trespassed into the suit land and blocked the exits, and the road reserves, and have put up shanties and "boda boda" shades, and have also put up water tanks on top of the plaintiffs' sewer lines and water pipes. In the suit, the plaintiff has asked for orders to have the defendants evicted from the suit land; an order to demolish the shanties, "boda boda" shades, and the other developments; and a permanent injunction to restrain the defendants from the suit land.

2. Together with the plaint, the plaintiffs filed an application under Order 40 Rules 1(2), 2(1), 4(1), (2) of the Civil Procedure Rules and Sections 40 (1) and 158 of the Land Act, 2012. In the application, the plaintiffs have asked for the following principal order which is prayer 3 of the application :-

That pending the hearing and determination of this suit, the Honourable Court be pleased to issue an order of injunction restraining the defendants by themselves, their agents and workers and servants from putting up structures, boda boda shades, and from entering into or in any other way dealing with land parcel No. Nakuru Municipality Block 21/79 and the access/reserve road and the OCS Nakuru Central Police Station to ensure compliance with this order.

3. In the supporting affidavit, sworn by the 1st applicant, it is averred inter alia that the plaintiffs are in the process of subdividing the suit land. It is further deposed that the respondents have put up the developments complained of on the suit land extending to the road reserve.

4..None of the respondents opposed the application. On behalf of the 1st respondent, only a Memorandum of Appearance was filed and counsel did not appear at the inter partes hearing of the application. No appearance has been entered in respect of the 2nd and 3rd respondents. On their part, the 4th respondent entered into a consent with the applicants, accepting that they will vacate the suit land, demolish all structures and give vacant possession to the plaintiff within 14 days. They also accepted that an order of permanent injunction against them, may issue. It is apparent therefore that the 4th defendant is not opposing the entire suit.

5. As I mentioned, nothing has been filed to oppose this application by the other respondents.

6. On my part, I see no reason why I should not allow the application for injunction. I have seen for myself that the plaintiffs have title to the suit land. The defendants have not given any justification for encroaching into the plaintiffs' land and for allowing developments around its reserve. To me, this is an interference of the plaintiffs' right to enjoy their property.

7. I therefore allow the application. I order the defendants to be restrained by an order of injunction from putting up structures, boda boda shades, and from entering into or in any other way dealing with the land parcel Nakuru Municipality Block 21/79 and the access/reserve road, pending the hearing and determination of this suit. The OCS Nakuru Central Police Station is directed to ensure compliance with these orders.

8. The costs of the application shall be costs in the cause.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 21st day of September 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of : -

Mr. Otieno holding brief for Ms. Muthoni for applicants

No appearance on part of respondents

C/Assistant : Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU