



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 152 OF 2016

THUO COMMERCIAL AGENCIES LIMITED....PLAINTIFF

VERSUS

KENYA AIRPORTS AUTHORITYDEFENDANT

RULING

(Application for injunction; principles to be applied; plaintiff demonstrating ownership of the suit property by displaying title; claim that defendant is interfering with the same; no response filed by the defendant; prima facie case demonstrated; application allowed)

1. This suit was commenced by way of plaint filed on 4 May 2016. Together with the plaint, the plaintiff filed an application for injunction, which application is the subject of this ruling.
2. The case of the plaintiff is that it is the registered proprietor of the land registered as L.R No. 4731/1 East of Nakuru Municipality measuring approximately 82.7 Hectares. It is alleged that the defendant, which is a statutory corporation, has through its servants/agents, illegally entered the suit property and threatened to forcefully remove the plaintiff. It is pleaded in the plaint, that the defendant has issued strict instructions to its servants/agents to bar the plaintiff from carrying out any activities on the suit property, which action is illegal. In the suit, the main prayer is for the defendant to be permanently restrained from the suit property.
3. The supporting affidavit has been sworn by David Thuo, a director of the plaintiff company. He has inter alia deposed that the plaintiff was issued with a Certificate of Title on 9 March 1984 and he annexed a copy of the same. In exercise of its rights over the property, the plaintiff has embarked on subdivision of the same into smaller plots for sale and has appointed a firm of surveyors to carry out the subdivision. The plaintiff has also employed a contractor to open up roads within the suit property. It is deposed that on 21 October 2015, while the surveyor and contractor were in the course of their work, the servants/agents of the defendant moved into the suit property and ordered them to stop activities. This, it is contended, has greatly inconvenienced the plaintiff and is illegal. It is for that reason that the plaintiff seeks orders to stop the defendant from the suit property.
4. Despite being served with summons and the application, the defendant/respondent only filed a Memorandum of Appearance. Neither did counsel for the respondent appear at the inter partes hearing of the application. The only material that I have is therefore that tendered by the plaintiff.
5. To succeed in an application of this nature, an applicant needs to demonstrate a prima facie case with a probability of success; demonstrate that he/she stands to suffer irreparable loss unless the injunction is

granted; and if in doubt, the court will determine the application on a balance of convenience. These principles were laid down in the case of *Giella vs Cassman Brown (1973) EA 358*, and I stand guided by the same.

6. From the material before me, I can see that the plaintiff appears to have a title to the suit property. The same was issued on 9 March 1984. I have also seen a letter of consent from the Nakuru Land Control Board, dated 20 August 2015, permitting the plaintiff to subdivide the land into 1126 portions. The defendant has not tabled anything to demonstrate that it has any right over the suit property. Its actions of sending persons to stop the plaintiff's activities on the said land, to me, appear completely unjustified. I have no doubt in my mind that the plaintiff has demonstrated a prima facie case with a probability of success. I therefore allow this application and pending hearing and determination of this suit, the defendant and/or its servants/agents are hereby ordered not to enter, be upon, or in any other way interfere with the plaintiff's activities in the land parcel L.R No. 4731/1 East of Nakuru Municipality. The plaintiff shall also have the costs of this application.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 13th day of October 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :-

Mr. Geoffrey Otieno for the plaintiff/applicant

No appearance on the part of M/s Kithure Kindiki & Company Advocates for the defendant/respondent

Court Assistant: Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU