



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 630 OF 2008

JAMES KIMANI HORERIA.....PLAINTIFF

VERSUS

JAMES OSCAR KATUA

(Sued on his own behalf and on behalf of

MARGARET MARY KATUA (DECEASED).....1ST DEFENDANT

IRENE WAYUA a.k.a MULIENGE.....2ND DEFENDANT

GILBERT MAKAU KATUA.....3RD DEFENDANT

JOHN KYENDE KATUA.....4TH DEFENDANT

RULING

This suit has been pending in court for the last seven (7) years. No serious attempt has been made to prepare the suit for trial. What the parties have engaged themselves in since the suit was filed are applications for interlocutory orders which have done little to progress the case towards ultimate determination. The initial 1st Defendant, Margaret Mary Katua passed on in the course of the long wait for justice.

What I have before me is yet another interlocutory application brought by the Plaintiff by way of Notice of Motion dated 30th May 2014. The application itself has been pending hearing for the last 2 years. In the application, the Plaintiff has sought several injunctive reliefs against the Defendants and an order for the eviction of some unnamed persons who have put up illegal structures on the suit properties under the supervision of the O.C.S Embakasi Police Station. The Plaintiff had brought a similar application on 31st December 2008 and even managed to obtain an ex parte temporary order of injunction against the Defendants. The ex parte order remained in force until 14th May 2009 when the application was called out for hearing before Nambuye J. and stood over generally when none of the parties appeared for the hearing thereof. The said application which was brought by way of Notice of Motion dated 22nd December 2008 is still pending hearing. Instead of proceeding with the said application or withdrawing it, the Plaintiff has now brought the present application.

The Plaintiff’s present application is supported by the affidavit of the Plaintiff’s advocate, Francis Kariuki Mahia sworn on 30th May 2014. The application is opposed by the Defendants through a replying affidavit sworn by the 1st Defendant on 1st October 2015. The application was argued by way of written

submissions. I have considered the Plaintiff's application together with the affidavit filed in support thereof on the principles which were set out in the case of **Giella vs. Cassman Brown and Company Ltd. (1973) E.A 358**. I have found the facts giving rise to the Plaintiff's claim against the Defendants highly contested and it is not possible to resolve the same at this stage on affidavit evidence. The issues raised by the parties can only be determined at the trial of the suit. In the circumstances, I am not satisfied that the Plaintiff has established a prima facie case against the Defendants. That being my view, it is not necessary for me to consider whether the Plaintiff would suffer irreparable harm unless the injunction sought is granted. The foregoing findings would have been sufficient to dispose of the application before me. I am of the view however that in the circumstances of this case, it is necessary in the interest of justice to preserve the suit properties awaiting the determination of the parties' dispute over the same. In the case of **Ougo & Another vs. Otieno [1987] KLR 364**, it was held that;

“The general principle is that where there are serious conflicts of facts, the trial court should maintain the status quo until the dispute has been decided at the trial.”

I have noted from their submissions that the Defendants have no objection to the status quo being maintained.

In the final analysis, I decline to grant the prayers sought in the Notice of Motion dated 30th May, 2014. In place thereof, I order that,

1. Pending the hearing and determination of this suit or further orders by the court, the status quo pertaining to the title, use and occupation of all those parcels of land formerly known as L.R No. 13418/16, 17 and 18 Embakasi Farm/Njiru now known as L.R No. 13418/116, 117, 118 and 119 respectively which were excised from the head title L.R No. 6832 Embakasi Farm/Njiru shall be maintained by the Plaintiff and the Defendants. For the avoidance of doubt, there shall be no further alienation or sub-division of the said parcels of land.
2. The Plaintiff shall take steps to set down his suit for pre-trial case conference and directions within 30 days from the date hereof failure to which the order granted in paragraph one (1) above shall automatically stand discharged.
3. The costs of the application shall be in the cause.

Delivered and Dated at Nairobi this 4th day of November, 2016

S. OKONG'O

JUDGE

In the presence of

Ms. Matu for the Plaintiff

Mr. Moindi h/b for Nyamoti for the Defendants

Kajuju Court Assistant