



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 162 OF 2014

INNOCENT ELIAS MUCHIRI GITONGA.....PLAITNIFF

VERSUS

THE COUNTY GOVERNMENT OF NYANDARUA

COUNTY.....1ST DEFENDANT

THE LAND REGISTRAR NYANDARUA LAND

REGISTRY.....2ND DEFENDANT

THE DISTRICT LAND SURVEYOR

NYANDARUA.....3RD DEFENDANT

THE HON. ATTORNEY GENERAL4TH DEFENDANT

RULING

1. This suit was commenced by way of plaint filed on 10 June 2014. The plaintiff is the legal administrator of the estate of the late Naomi Wairimu Gitonga under whose name the land parcel Nyandarua/Ol Joro Orok Salient/1105 (the suit land) is registered. This land borders the Bridge Hills Girls-Gatimu Secondary School Road. It is pleaded that the Government issued notices in 2011 and 2012 that it would seek the reclamation/widening of this road. It is the plaintiff's case that the intended action will encroach into the suit land by about 0.3 acres which will have the effect of reducing the acreage. It is also the plaintiff's case that on the ground the land is only about 5.55 acres yet in the title deed and RIM, it is 6.93 acres. In the suit, the plaintiff has sought orders to restrain the defendants from effecting the widening of the Bridge Hills Girls- Gatimu Secondary School Road or in any other way encroaching onto the suit land. He also wants a declaration that his land is under-size and an order for comprehensive re-surveying of the area bordering the suit land so as to establish where the correct boundaries are. In the alternative he seeks compensation for the missing acreage at market rates.

2. Together with the plaint, the plaintiff filed an application for injunction to stop any interference with the existing boundaries of his land, pending hearing of the suit. The reason for seeking the injunction is that the defendants intend to proceed with the widening of the road despite the plaintiff's plea that the same will encroach into his land.

3. None of the defendants filed any document to oppose the application. On the day of the hearing of the application on 17 February 2015, Mr. Mbaka of the State Law Office for the 2nd, 3rd and 4th respondents stated that they do not wish to oppose the application. Mr. Cheruiyot holding brief for Mr. Gachiengo for the 1st respondent, sought an adjournment inter alia on the grounds that Mr. Gachiengo was yet to get instructions in the matter. I declined to grant the adjournment since on 20 November 2014, I allowed Mr. Gachiengo an adjournment on similar reasons. Mr. B.N. Kipkoech for the applicant urged me to allow the application as one that was unopposed.

4. I have considered the application. The plaintiff's case is that the proposed widening of the road will encroach into his land. I cannot tell from the material before me whether or not the widening of the road will actually encroach into the plaintiff's land. The defendants have not been helpful as they have not tabled any material to justify why they want the road widened as intended. I guess the issue of whether the road encroaches into the plaintiff's land or not will be an issue to be determined at the trial and I hesitate to make any preliminary pronouncements at this stage.

5. But it is my view that the balance of convenience tilts in having the land of the plaintiff un-interfered with, until the case is heard and determined, for if it happens that the proposed road will encroach into his land, the plaintiff stands to suffer loss.

6. I therefore allow the application. Costs will be in the cause.

It is so ordered.

Dated, signed and delivered in open court at Nakuru this 19th day of February 2015

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

AT NAKURU

In presence of :-

Mr Biko holding brief for Ms. Fatma Ali for plaintiff

Mr Mbaka present for 2nd - 4th defendants

M/s Gachiengo Gitau for 1st defendant – Absent

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

AT NAKURU