



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT AND LAND COURT**  
**ELC. CASE NO. 958 OF 2014**

**ANGELINE OKWEYA NANDWA & JANE ARIMI**

**(SUING ON BEHALF OF SINGLE MOTHERS**

**ASSOCIATION OF KENYA).....PLAINTIFF**

**VERSUS**

**NAIROBI COUNTY GOVERNMENT .....DEFENDANT**

**RULING**

Coming up before me for determination is the Notice of Motion dated 21<sup>st</sup> July 2014 in which the Plaintiff/Applicant seeks for orders of temporary injunction and prohibitory orders restraining the Defendant from evicting, subdividing and interfering with the property known as Plot No. CPX Arch/002619 being excision of a disused parking lot at the Hindu Cemetery on L.R. No. 209/6738 Kinyanjui Street, Ziwani, Nairobi (hereinafter referred to as the “suit property”) pending the hearing and determination of this Application and suit.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of Angeline Okweya Nandwa, sworn on 21<sup>st</sup> July 2014 in which she averred that she is the Chairperson of the Single Mothers Association of Kenya (“SMAK”), a community based self-help group whose functions are to empower women, Aids orphans and destitute children among other social development activities. She further averred that in the year 1992, SMAK was allotted the suit property by the Defendant. In proof of that assertion, she annexed copies of the letter of allotment as well as the beacon certificate. She confirmed having paid the stand premium and ground rent requested for and attached receipts as evidence thereof. She also confirmed having paid the land rates up to date. She confirmed further that SMAK has been in occupation of the suit property from that time until the year 2013 when they realized that the suit property had been subdivided by the Defendant and the suit property reduced to half its former size. She averred that upon learning of this development she wrote a complaint letter to the Defendant seeking for their title to the suit property which has been pending. She averred that their repeated efforts to follow up the processing of their title document have not materialized to date. She stated that on 8<sup>th</sup> July 2014, they received a letter from the Defendant requiring them to vacate and move out of half portion of the suit property within 7 days. She stated that they are at risk of being evicted unlawfully and illegally notwithstanding the fact that they have been in occupation of the entire suit property for the last 22 years and have erected permanent structures thereon for the welfare of orphans,

the disabled, youth and single mothers.

The Application is contested. The Defendant/Respondent filed the Replying Affidavit of S.G. Mwangi, the Chief Officer Land subsector, sworn on 26<sup>th</sup> August 2014 in which he averred that the Defendant/Respondent admits to having allocated the Plaintiff part of the suit property measuring 0.2 hectares which is equivalent to half an acre but denies that it allotted the entire parcel currently occupied by the Plaintiffs/Applicants. He further averred that the beaconing carried out on site by the Defendant's surveyor in order to demarcate the plot for the Plaintiffs was done as per the allotment letter and in conformity with the Part Development Plan. He further stated that this notwithstanding, the Plaintiffs had proceeded to occupy a greater area contrary to the size allocated to them. He further admitted that the Plaintiffs paid stand premium, ground rent and land rates but emphasized that such payments were in respect of the plot allocated to the Plaintiffs and further that some of the structures developed on the suit property encroached on the piece of land not allocated to the Plaintiffs. He further confirmed that the Defendant/Respondent wrote to the Plaintiffs in its letter dated 8<sup>th</sup> July 2014 requiring them to vacate the piece of land not allotted to them and also requested the Plaintiffs to submit their ownership documents for the piece of land allotted to them for the purpose of the processing of a title. He closed by stating that the Defendant/Respondent has no intention of dispossessing the Plaintiffs of the piece of land which it genuinely allotted to them but merely requires them to stick within the plot and not encroach on the county's land which was not given to them and is not shown on the PDP.

In response thereto, the Plaintiffs filed the Supplementary Affidavit of Angeline Okweya Nandwa sworn on 4<sup>th</sup> September 2014 in which she averred that SMAK was allocated the entire parcel of land forming the suit property and that they proceeded to take possession thereof in the year 1992. She further averred that the PDP and the beacon certificate were altered and changed and that the Defendant issued them with a letter of allotment which indicated the size of their plot as 0.2Ha. She beseeched the court to preserve the suit property considering that there are erected on the disputed parcel of land structures meant for the use of single women, young women and orphans who are vulnerable and weak.

I have read the submissions filed by the Plaintiffs and the Defendant.

The issue arising for my determination is whether or not to grant the temporary injunction sought after by the Plaintiffs/Applicants. In deciding whether to grant the temporary injunction sought after by the Plaintiffs/Applicants, I wish to refer to and rely on the precedent set out in the case of **GIELLA versus CASSMAN BROWN (1973) EA 358** in which the conditions for the grant of an interlocutory injunction were settled as follows:

**“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”**

Have the Plaintiffs/Applicants made out a prima facie case with a probability of success? In the case of **MRAO versus FIRST AMERICAN BANK OF KENYA LIMITED & 2 OTHERS (2003) KLR 125**, a prima facie case was described as follows:

**“a prima facie case in a Civil Application includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”**

The question whether the Plaintiffs/Applicants have demonstrated a genuine and arguable case no doubt leads me to an assessment of the documents of ownership produced by them in this Application. The Plaintiffs/Applicants rely on a Letter of Allotment dated 29<sup>th</sup> April 1997 issued to them by the Defendant. In that letter, it is stated that SMAK was allotted a parcel of land identified as “Workshop Plot” on Kinyanjui Street, Ziwani measuring approximately 0.2 Ha. The Defendant has conceded that it did indeed

allot the Workshop plot to the Plaintiffs but contend that the Plaintiffs went on to occupy a larger parcel of land than was initially allotted to them. It is that other parcel of land that the Defendants require the Plaintiffs to vacate failing which they shall be evicted. Clearly, there is no dispute regarding the ownership of the Workshop Plot by the Plaintiffs. However, the dispute revolves around the other parcel of land which the Plaintiffs also occupy. In the absence of a title document, the only document that the Plaintiffs can rely on to assert their ownership rights is the Letter of Allotment earlier alluded to. That Letter of Allotment is clear that the area covered measures 0.2 Ha. The Plaintiffs have not been able to produce any ownership documents for the other parcel of land they occupy which the Defendant wants them to vacate. While I concede that the Plaintiffs are engaged in the noble cause of catering for the needs of the less advantaged members of society being single mothers, orphaned children and the disabled, laws are there to be obeyed. The Plaintiffs have failed to demonstrate any ownership rights over the entire suit property. As such, this court cannot protect rights that do not exist. I therefore find that the Plaintiffs have failed to show this court that they have ownership rights over the entire suit property which are capable of protection by way of a temporary injunction. I therefore make the finding that the Plaintiffs have failed to show that they have a genuine and arguable case and therefore a prima facie case with high chances of success at the main trial.

Since the Plaintiffs have failed to prove the first ground in the grounds set down in the celebrated case of **Giella versus Cassman Brown**, this Honourable Court need not venture into the other grounds. This position was upheld in the Court of Appeal case of **Kenya Commercial Finance Co. Ltd versus Afraha Education Society (2001) 1 EA 86** as follows:

**“The sequence of steps to be followed in the enquiry into whether to grant an interlocutory injunction is ... sequential so that the second condition can only be addressed if the first one is satisfied...”**

Arising from the foregoing, I hereby dismiss the Application. Costs shall be in the cause.

**DELIVERED AND SIGNED IN NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY 2015.**

**MARY M. GITUMBI**

**JUDGE**