



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
LAND AND ENVIRONMENTAL DIVISION
ELC CIVIL SUIT NO. 1560 OF 2014

MERCY WANJIRU.....1ST PLAINTIFF
PETER MAINA NDEGWA.....2ND PLAINTIFF
JUSTUS WAINAINA NJUGUNA.....3RD PLAINTIFF
DAVID NJERU NYAGA.....4TH PLAINTIFF

VERSUS

GERALD KARIUKI WABACHA1ST DEFENDANT
JOHN WABACHA.....2ND DEFENDANT
MICHAEL KANGETHE3RD DEFENDANT

RULING

The plaintiffs by a Notice of Motion dated 17th December 2014 seek an interim injunction restraining the Defendants by themselves, their servants, agents and/or employees from interfering with the plaintiffs quiet enjoyment and user of parcels of land known as **Nairobi/Block 107/1131 and Nairobi/Block 107/1132** situated at **Umoja Zone** Nine, Nairobi pending the hearing and determination of this suit.

The application by the plaintiffs is based on the grounds set out on the face of the application and on the affidavit of **Peter Maina Ndegwa**, the 2nd plaintiffs herein sworn on 17th December 2014. Inter alia the plaintiffs claim that:-

1. They are the registered proprietors of parcels of land known as **Nairobi/Block 107/1131** and **Nairobi/Block 107/1132** situated in **Umoja Zone** nine, Nairobi.
2. They have all along been in possession of the said properties.
3. The defendants have trespassed upon the plaintiffs parcels of land by erecting a perimeter wall and illegal structures thereon.
4. The defendants are engaging in wanton destruction of the plaintiffs properties and unless the orders issued directing supervision by the police, it will be difficult for the plaintiff to enforce the same.

5. The plaintiff stands to suffer irreparable loss/damages unless the defendant is restrained herein.

The plaintiffs were granted *ex parte* interim orders of injunction for 14 days to be enforced by the police on 18th December 2014 by **Hon. Lady Justice Nyamweya**.

Upon being served with the application the Defendants through the law firm of **Betty Mwenesi & Associates** filed grounds of opposition dated 27th January 2015 and a replying affidavit sworn by **Gerald Kariuki Wabacha**, the 1st Defendant on the same date. The grounds of opposition filed by the defendants are that :-

1. The applicants have failed to disclose that there have been previous suits filed touching on the same subject matter between the plaintiffs and the defendants.
2. The application is frivolous vexatious and an abuse of the court process.

The defendants in the replying affidavit averred that the plaintiffs had misled the court to obtain the *ex parte* interim orders as the suit properties are the subject matter of a previous suit filed by the plaintiffs namely **HCCC NO.636 of 2010** where the plaintiffs have sued **Kiambu Dandora Farmers Limited** over the same subject property. The Defendants further stated there are several suits which have been consolidated touching on the same suit property where the plaintiffs herein are named as Defendants. The Defendants have annexed a copy of the amended plaint in **HCCC NO. 347 of 2013** marked “**GKW1**” where the 1st and 2nd plaintiffs are sued as the 46th and 47th Defendants respectively. The plaintiffs in **HCCC NO. 347 of 2013** *inter alia* seek declaratory orders that the transfers and titles issued in respect of land parcel Nos. **Nairobi/Block 107/1131** and **Nairobi/Block 107/1132** (the subject parcels in the suit) among other parcels of land are null and void.

The plaintiffs in a supplementary affidavit sworn on 4th February 2015 in response to the defendants replying affidavit averred that they were unaware of any orders of consolidation of any suits and maintained the suits are between different parties with no relationship to the present suit. The plaintiffs admit there is **HCCC NO.636 of 2010** where the plaintiffs with other persons have sued **Kiambu Dandora Farmers Co. Ltd** seeking an order of injunction restraining the said company from in any manner dealing with land parcel **Nairobi/Block 107/1131** among other parcels of land.

The plaintiffs deny being aware of the order consolidating the several suits that the Defendants claim were consolidated and assert that their claim against the Defendants can stand on its own.

The parties filed submissions as directed by the court. I have considered the pleadings and the parties filed submissions. The court takes cognisance that it has in fact ordered consolidation of the several suits namely:-

1. Nairobi HC ELC NO. 347 of 2013
2. Nairobi HC ELC NO. 636 of 2010
3. Nairobi HC ELC NO. 618 of 2010
4. Nairobi HC ELC NO. 223 of 2011
5. Nairobi HC ELC NO. 256 of 2010
6. Nairobi HC ELC NO. 1679 of 2010

In all these suits the subject matter is the subtitles that have resulted from the subdivision of land parcel **Nairobi/Block 107-Umoja Zone 9. Kiambu Dandora Company Limited** and the Nairobi City County are the key players in the alleged allocation of the subplots claimed by the various parties in all the suits. My view is that no suit among the consolidated suits can be properly adjudicated independently of the other suits as the issues are indeed cross cutting and a decision in one suit would invariably affect the other suits. This is what informed the order of consolidation.

In the premises I am satisfied the court as on 18th December 2014 when it granted the interim order of injunction did not have full disclosure of all the full facts and information, and if it had, most probably

would not have granted the ex parte orders that it did. In the context of the other pending cases which have been consolidated the orders would be unmerited. Considering that the court in the consolidated cases has ordered that the parties observe and maintain the status quo where there are no evictions, sales and/or transfers and no constructions and/or developments of a permanent nature are permitted, I would substitute the same order in the present suit. In consequence therefore the parties are directed to complete compliance with Order 11 of the Civil Procedure Rules within the next 30 days from the date hereof whereafter the parties will have the matter fixed for pretrial directions.

The costs for the instant application is directed to be in the cause.

Ruling dated, signed and delivered this 7th day of **May**, .2015.

J. M. MUTUNGI

JUDGE

In the presence of:

Mr. Mokaya for Ondabu for the Plaintiffs

Mr. Ouma for Mrs. Mwenesi for the Defendants