



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 31 OF 2015**

**JAMES MUIGAI THUNGU .....PLAINTIFF/APPLICANT**

**VERSUS**

**COUNTY GOVERNMENT OF TRANS-NZOIA.....1ST DEFENDANT/RESPONDENT**

**COUNTY EXECUTIVE OFFICER, LAND,**

**HOUSING & URBAN DEVELOPMENT ..... 2ND DEFENDANT/RESPONDENT**

**PHYSICAL PLANNER,**

**TRANS-NZOIA COUNTY.....3RD DEFENDANT/RESPONDENT**

**RULING**

1. The applicant brought a Notice of Motion dated **6/3/2015** in which he seeks an injunction restraining the three respondents from in any way interfering with **L.R. No. Kitale Municipality Block 4/407** which is registered in his name. The applicant contends that sometimes in February, this year, the respondents moved into his property, had it fenced and have deposited building materials and have threatened to construct on the property.
2. The property is registered in the applicant's name and has been paying rates to the first respondent. He contends that the respondents have no justifiable reason for interfering with his property. He further contends that the fencing of his property by the respondents has interfered with his enjoyment of his property.
3. The respondents have opposed the applicant's application based on grounds of opposition filed in court on **7/5/2015**. The respondents contend that the applicant's application is incompetent, misconceived and fatally defective and that it offends mandatory provisions of the law. The respondents further contends that the applicant has not met the threshold for grant of interlocutory injunction and that an injunction cannot issue against a Government.
4. The respondent contend that the application is not supported by the annexed documents and that the plot in issue is public land which was illegally allocated to the applicant and that the court should not grant an injunction as to do so will amount to the court promoting illegal allocation of public land.
5. I have considered the applicant's application as well as the grounds of opposition by the respondent. The first issue for determination in this application is whether an injunction can issue against a County Government. The counsel for the respondents submitted that an injunction cannot issue against a County Government. He cited the provisions of the **Government Proceedings Act Cap 40. Section 16(2) of the**

**Government Proceedings Act** provides as follows:-

***“The court should not in any Civil Proceedings grant any injunctive or make any order against an officer of the Government if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in proceedings against the Government”.***

6. The aforesaid Act forbids courts from giving an injunction against the Government. The section quoted hereinabove extends the same protection to Government Officers. This Act was in place even before the devolved system of Government came into force. The question which then arises is whether the Act can extend to the County Government. The County Governments are body corporate with power to sue and be sued. There is no provision in the County Government Act of 2012 which protects them from injunction orders. I do not think that it was the intention of the legislature that the County Governments were to enjoy the same status as the National Government. If this was the intention, then the Government Proceedings Act would have been amended to expressly include County Governments. I therefore do not find that the County Government can come under the umbrella of the Government Proceedings Act, when it comes to injunctions against them as well as their officers.

7. The next issue for determination is whether the applicant has met the threshold for grant of an injunction. The principles for grant of interlocutory injunctions were well set out in the case of ***Giella - vs- Cassman Brown & Co. Ltd 1973 EA 358***. First an applicant must demonstrate a prima facie case with probability of success. Secondly, an injunction will not normally be granted unless otherwise the applicant will suffer irreparable loss which will not be adequately compensated in damages. Thirdly if the court is in doubt, it will decide the application on a balance of convenience.

8. In the instant case, the applicant has demonstrated that he is the registered owner of the property in issue. A Certificate of Lease was issued to him on **3/3/1995**. He has been paying rates to the County Government of Trans-Nzoia which is the first respondent. The applicant has annexed photographs showing a fence round the property and some building materials accumulated on the same. The respondents did not file any replying affidavit to deny these facts. The respondents have merely claimed that the plot in issue was illegally allocated without providing any evidence.

9. The applicant has through the documents annexed in his supporting affidavit demonstrated that he has a prima facie case with probability of success. In the case of ***Mrao -vs- 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”.***

10. The applicant has demonstrated that he is the registered owner of the property. The respondents have come to the property and fenced it and accumulated building materials on it. The acts of the respondents have clearly infringed on the applicant's right to enjoyment of his property. He is entitled to protection. A party cannot come to one's property and start interfering with it and argue that since it is capable of paying costs, it can go on with the interference. The allegations by the respondents that the property was illegally allocated can only come out during the hearing. Otherwise for now the applicant has demonstrated that he is entitled to an injunction to preserve the property until this suit is heard and determined. Consequently, I allow the applicant's application in terms of **prayers (c) and (d)** of the Notice of Motion dated **6/3/2015**.

It is so ordered.

Dated, signed and delivered at Kitale on this **21st** day of **July**, **2015**.

**E. OBAGA**

**JUDGE**

**COURT**

Ruling delivered in court at **10.41 am** in the absence of parties who were aware of today's date.

Court Assistant – Winnie.

**E. OBAGA**

**JUDGE**

**21/7/2015**