



Case Number:	Civil Case 646 of 2006
Date Delivered:	27 Jul 2006
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	-
Judge:	John Luka Osiemo
Citation:	MASLOW AGENCIES LTD v TOB COHEN [2006] eKLR
Advocates:	-
Case Summary:	<p>[Ruling] – INJUNCTION – temporary injunction – application to restrain the respondent from developing or interfering with LR NO. 2591/449 pending the conditions set out by the City Council and the Ministry of Lands – where the applicant claims that the respondent is building even though he has not met the conditions of the Ministry and the Council and it has not obtained a positive Environmental Impact Assessment Report – effect of – applicable principles – whether the applicant established a <i>prima facie</i> case</p> <p>LOCUS STANDI – public claims - where the applicant brought a claim of none compliance of statutory provisions under the wrong Act – procedure to be followed in making claims of a public nature – whether the applicant has <i>locus standi</i></p>
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-

Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 646 of 2006

MASLOW AGENCIES

LTD.....PLAINTIFF

VERSUS

TOB COHEN.....DEFENDANT

RULING

The plaintiff by way of this Chamber Summons seeks orders:

(1) That the defendant, his servants , agents or howsoever be restrained from developing, constructing, or interfering in any way whatsoever with LR NO. 2591/449 pending the conditions set out by the City Council of Nairobi on 13th October 1994 be complied with.

(2) That the defendant, his servants, or agents or howsoever be restrained from developing, constructing or interfering in any way whatsoever with LR NO. 2951/449 pending conditions set out by the Ministry of lands on 15th February 1995 being complied with.

(3) That the defendant, his servants or agents or howsoever be restrained from developing, constructing or interfering in any way whatsoever with LR NO.2951/449 pending a positive assessment being obtained as required by the Environmental Management and Company Ordinance Act.

(4) That the defendant be restrained from causing excessive noise and dust pollution from his property LR NO.2951/449.

(5) That the plaintiff do give an undertaking as to damages.

The application is based on the grounds:

1. That the defendant is developing his property even though conditions set out by both the Ministry of Lands and the City Council of Nairobi have not been met.

2. That the defendant has not obtained a positive Environmental Impact Assessment Report.

3. That the defendant's development is interfering with the plaintiff's right to a clean safe and secure environment.

4. That the plaintiff's tenants are unable to occupy the plaintiff's premises due to nuisance and pollution being caused on the defendant's property.

The application is supported by an affidavit sworn by Ruiru Gikonyo a Director of the plaintiff

company which he avers that the plaintiff is the owner of LR NO. 2951/448 and the defendant purports to be the owner of LR NO. 2951/449, that LR NO.2951/449 was originally part of the LR NO.2951/70 owned by Mr. Maxwell Kinyanjui Miringu; that when the aforesaid Mr. Maxwell Kinyanjui Miringu sought to subdivide and sell the property, he was given certain conditions which he had to comply with before the subdivision could be approved by the Nairobi City Council; that in addition the Commissioner of Lands also gave the vendor certain conditions that he had to comply with before the property could be subdivided, that he is aware that none of the conditions stipulated by both the Nairobi City Council and the Commissioner of Lands have been met and in the circumstances, the property could not have been legally subdivided nor approval given for the development of buildings thereon; that he was surprised when the defendant wrote the plaintiff Directors informing them of his intention to develop LR NO. 2951/449; that by letter dated 24th May 2006 the plaintiff enquired from Nairobi City Council as to whether the conditions they had laid out to allow for the subdivision of LR NO. 2951/70 had been met and by letter dated 15th June 2006 the council informed the plaintiff that the development taking place was illegal.

The application is opposed by the defendant who has filed replying affidavit in which he avers that the acts complained of by the plaintiff, environmental assessment report, conditions of City Council of Nairobi and Ministry of Lands are remotely related to the plaintiff; that the conditions set out by the Nairobi City Council and those set out by the Ministry of Lands were addressed to the original owner Maxwel Kinyanjui Miringu when the plot was LR. NO. 2951/70 before the same was subdivided and they were particularly addressed to the original owners to fulfill the same to enable the subdivide of the said plot into smaller plots that it was only after the said conditions were fulfilled, that said original plot was subdivided to bear other plots including the plaintiffs' plot LR NO. 2951/448 and the defendants plot LR NO. 2951/449; that the plaintiff has developed his plot and that the defendant is also developing his.

None compliance of statutory provisions or conditions made there under are of a public nature and can be dealt with under the relevant Acts. All that the plaintiff should do is to report to the Nairobi City Council officials and to the Commissioner of Lands that the conditions that were laid down to regulate the subdivision of LR NO. 2951/70 were not complied with and that necessary actions be taken. A report can also be made to the Director of NEMA in respect of Environment Assessment Report. Otherwise the plaintiff lacks locus stands to institute this suit against the defendant.

Consequently the plaintiff's Chamber Summons dated 21st June 2006 is dismissed with costs.

Dated and delivered at Nairobi this 27th day of July 2006.

J.L.A. OSIEMO



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