



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND CASE NO. 62 OF 2015

MARTIN LOBO.....1ST PLAINTIFF/APPLICANT
SAMUEL KITHINJI.....2ND PLAINTIFF/APPLICANT
KAARIA IKUNYUA.....3RD PLAINTIFF/APPLICANT

VERSUS

FRANCIS M' NGUTHARI M'ITEWA1ST DEFENDANT/RESPONDENT
SAMUEL GIKUNDI.....2ND DEFENDANT/RESPONDENT
NKINYERI.....3RD DEFENDANT/RESPONDENT
JOSEPH KIBITI.....4TH DEFENDANT/RESPONDENT

R U L I N G

This application is dated 27th July, 2015 and seeks orders that:-

- a. *This application be certified urgent be heard ex-parte, and service of the same be dispensed with in the 1st instance.*
- b. *The Court do issue an order for temporary injunction restraining the defendant/their servants, agents and/or employees from entering, trespassing, constructing, building, and/or in any other way whatsoever interfering with the applicants quiet possession and enjoyment of Plot Nos. 2275, 2276 and 2277 Mwangaza ' C' area, within Isiolo Township until this suit is heard and determined or until this application is heard and determined or until further orders of this court.*
- c. *The Court do make such further or better orders as may meet the ends of justice in this matter.*
- d. *Costs of this application be provided for.*

The application is supported by the affidavit of Martin Lobo, the 1st plaintiff, and has the following grounds:-

1. *The respondent have entered the said plot and commenced construction by digging a pit, subdividing and fencing.*

2. The applicants will suffer irreparable damage if the order sought is not granted.

The Supporting Affidavit sworn by the 1st Plaintiff, Martin Lobo, on 27.07.2015 states as follows:-

I, MARTIN LOBO of P. O Box 1006-60200, MERU do hereby make oath and states as follows:-

- 1. That I am the 1st Plaintiff/Applicant herein competent to swear this affidavit.**
- 2. That I am well versed with all the facts in this case and I make this affidavit on my own behalf and on behalf of my co-plaintiffs.**
- 3. That before the year 1994 we had been allotted each a plot at Kula Mawe within Isiolo Township.**
- 4. That however, when survey was done in 1994 we were displaced and the council allotted us other plots near the maize produce and cereals board in an area known as Mwangaza 'C' (annexed and marked "ML 1" is a letter from the council).**
- 5. That we were each given a plot and I was given plot No. 2275, and 2nd Plaintiff was given plot No. 2276 and the 3rd plaintiff was given plot No. 2277 and we have been paying rates (annexed and marked 'ML2 ' are payment receipts).**
- 6. That we immediately took possession and fenced with a live fence and also put some semi-permanent structures and a worker to take care of the same.**
- 7. That we also commenced cultivation of the said plots and we have been also put some semi-permanent structures and a worker to take care of the same.**
- 8. That in the year 2008 the Council wanted to allocate these plots to 3rd parties but we proved to it that we rightfully held them and we were left alone. (annexed and marked 'ML 4' is a letter to the then Isiolo County Council).**
- 9. That in May, 2015 the 1st defendant started claiming the said plots and purported to distribute them to the 2nd ,3rd and 4th defendants.**
- 10. That all the defendants then entered the plots and sub-divided the same forcefully and dug a pit and put some barbed wire.**
- 11. That we tried to talk to them but they threatened us with physical violence and we reported to the Chief who after hearing us wrote a letter (annexed and marked 'ML 5' is the Chief letter).**
- 12. That I therefore pray for an order of injunction restraining the respondents, their agents, servants, and/or employees from entering, constructing, building, trespassing and/or in any other manner interfering with the said plots or with our peaceful and quiet enjoyment of the same.**
- 13. That what is deponed to herein above is true to the best of my knowledge, belief and understanding.**

When the matter came up for directions on 30/03/2016, it transpired that the application had not been opposed. Miss Njenga, holding brief for Carlpeters Mbaabu, for the Defendants told the Court that Mr. Mbaabu had been unable to file a response to the application as he was unable to trace or otherwise contact his clients. In view of this intimation and also of the fact that the application is not opposed, I find it necessary to exercise this Court's discretion to allow the application. In the circumstances, the application is allowed in terms of order b thereof.

Costs shall be in the cause.

It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 30TH DAY OF MARCH, 2016 IN THE PRESENCE OF:

CC: Lilian

P . M .NJOROGE

JUDGE