



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CIVIL CASE NO. 74 OF 2008**

**LUKE NJIRU KAGEKI.....APPLICANT/PLAINTIFF**

**VERSUS**

**INDUSTRIAL AND COMMERCIAL DEV CORP.....RESPONDENT/DEFENDANT**

**AND**

**EDWIN NYAGA NYAMURA.....RESPONDENT /INTERESTED PARTY**

**RULING**

1. This ruling is in response to the issue of alleged lack of jurisdiction in this court to entertain this matter, which has been raised by Ms Ndorongo for the respondent/interested party. According to counsel, the court lacks jurisdiction to grant the order sought as it relates to land. Ms Ndorongo has filed one ground of opposition to the application, together with a replying affidavit in support thereof.

2. In his replying affidavit dated 19<sup>th</sup> September 2016, the respondent /interested party has deponed that he is the registered owner of the suit land land parcel No. Kagaari/Weru/1544, which he acquired in 2008, as a result of having bought the same in a public auction. He has further deponed that he has been in possession of the suit land since 2008. His further affidavit evidence is that the applicant/plaintiff placed a caution against the suit land on 17<sup>th</sup> July 2008. And has deponed further that it is not true that the suit land can be disposed of. It is also his further affidavit evidence that he has never been served with a court order and that the applicant/plaintiff is not justified to place a caution or an inhibition against his land. Finally, he has deponed that he has been informed that this court lacks jurisdiction to grant the order sought by the applicant/plaintiff.

3. The issue of jurisdiction which has been raised by the respondent/interested party is in response to the applicant/plaintiff's ex-parte notice of motion expressed to be brought under sections 1A, 1B, 3, 3A and 63 (e) of the Civil Procedure Act (Cap 21) of the Laws of Kenya as well as under Orders 40 rules 1 (a), 2 (1), 3 (1) and 4 (1) of the 2010 Civil Procedure Rules. The applicant/plaintiff has sought the following orders in his notice of motion.

- a) That the application be heard ex-parte because it is urgent, this has already been done.
- b) A temporary order of a mandatory injunction to issue to compel the respondent, his agents and servants and all those claiming under him to vacate land parcel No. Kagaari/Weru/1544 to revert the status quo to the position on or before 9th May 2016 and further maintain that status.
- c) An order to provide for costs.

4. The application is grounded on the grounds on the face of the notice of motion. Ground 1 is that the applicant/plaintiff and his family have lived on the suit land since he acquired it in 1977. In ground 2 he has stated that on 6<sup>th</sup> September 2016, the respondent by himself and/or his servants invaded the suit land and occupied the same with an intention of dispossessing the applicant. In ground 3 he has stated that the respondent damaged properties on the suit land including tree crops and other properties. In ground 4 he has stated that the respondent invaded the suit land and occasioned violence and disturbed the peace and the livelihoods of the applicant and his family. And finally in ground 5 the applicant/plaintiff has stated that the registration of the title to the land in the name of the respondent/interested party is the subject of court proceedings, in which the applicant is seeking the cancellation of the said title.

5. The applicant has deponed an affidavit dated 13<sup>th</sup> September 2016 which contains 15 paragraphs. I will only refer to the major paragraphs in that affidavit. The applicant has deponed that he acquired ownership of the suit land in 1977 and has been living thereon together with his family up to date. He has also deponed that on or about 9<sup>th</sup> July 2008, the respondent/interested party through some illegal arrangement or conspiracy caused the title to the suit land to be registered in his name. He has further deponed that on 12<sup>th</sup> July 2008, the respondent/interested party attempted to enter the suit land by force, but was repulsed by the applicant. He has further deponed that on 28<sup>th</sup> July 2016 he received a report from the area chief that the respondent/interested party was making threats that he would enter and take possession of the suit land with an intention to dispossess the applicant.

6. Furthermore, the applicant has deponed that on 6<sup>th</sup> September 2016 the respondent/interested party brought a group of his servants and agents who caused forceful and violent eviction of the applicant's tenants and workers and as a result the respondent took possession of the suit land. He has also deponed that the applicant/plaintiff caused a report to be made at Runyenjes police station under OB No. 14 of the same day concerning the actions of the respondent/interested. He has also deponed that on the following day 7<sup>th</sup> September 2016, the respondent/interested party's workers and agents physically attacked and injured one of the applicant's/plaintiff's family while they were on the suit land.

7. Finally, the applicant/plaintiff has deponed that this affidavit is in support for his application for a mandatory injunction to force the respondent by himself, his servants and agents to vacate the suit land and to revert the status quo to what it was before 6<sup>th</sup> September 2016.

8. The issue raised in this application is in respect of the jurisdiction of this court. In this regard, the ***Environment and Land Court Act (Cap 12A)*** of the Laws of Kenya is relevant. ***Section 13 (1)*** of that act provides that that court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with ***Article 162 (2) (b) of the 2010 Constitution***. Furthermore, ***section 13 (2)*** of the same act gives power to the Environment and Land Court to hear and determine disputes:

***a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;***

***b) relating to compulsory acquisition of land;***

***c) relating to land administration and management;***

***d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and***

***e) any other dispute relating to environment and land.***

9. In the light of the applicable law and the affidavit evidence of both parties, I find that the major issue to be determined is one of jurisdiction of this court to entertain this matter. The second issue in relation as to who should bear the costs of this application.

10. I find from the affidavit evidence of the parties and the applicable law that the respondent/interested

party is the registered owner of land parcel No. Kagaari/Weru/1544. This is clear from his affidavit evidence to which he has annexed an exhibit marked “ENN1”. I also find that he has been in possession of the suit land since 2008. The applicant/plaintiff has disputed the ownership of the suit land as being the property of the respondent/interested party. He has deponed that the respondent/interested party illegally acquired the suit land. In the circumstances, I find that the ownership of the suit land is in dispute. The proper court to adjudicate over this issue of disputed ownership is the Environment and Land Court in accordance with the provisions of **section 13 of the Environment and Land Court Act as read with the Article 162 (2) (b) of the 2010 Constitution of Kenya.**

11. In the light of the foregoing, I find that this court has no jurisdiction to entertain this matter. It therefore follows that the application of the applicant/plaintiff cannot be entertained by this court for lack of jurisdiction.

12. The upshot of the foregoing is that the applicant's/plaintiff's application dated 13<sup>th</sup> September 2016 is hereby dismissed with costs to the respondent/interested party.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **22<sup>nd</sup>** day **SEPTEMBER 2016**

In the presence of the applicant/plaintiff but in the absence of his counsel and in the presence of Ms Ndorongo for the respondent/interested party and also holding brief for Ms Wairimu for the defendant

Court clerk Njue

**J.M. BWONWONGA**

**JUDGE**

**22.09.16**