



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**LAND AND ENVIRONMENTAL DIVISION**  
**ELC CIVIL SUIT NO. 2247 OF 2007**  
**(CONSOLIDATED WITH HCCC NO. 49 OF 2009)**

MOHAN GALOT .....PLAINTIFF

VERSUS

GANESHLAL PUSHARAM GALOT.....1<sup>ST</sup> DEFENDANT

PRAVIN GALOT ..... 2<sup>ND</sup> DEFENDANT

RAJESH GALOT ..... 3<sup>RD</sup> DEFENDANT

**RULING**

The Defendants have two pending applications, the Notice of Motion dated 3<sup>rd</sup> October 2014 but filed on 5<sup>th</sup> November 2014 and the Notice of Motion application dated 14<sup>th</sup> November 2014 and filed on the same date. Both applications seek injunctive orders against the plaintiff in regard to property **LR.NO.7022/7 Kiambu County** where both the defendants and the plaintiff reside. The applications are based on the grounds set out on the body of the applications and the affidavits sworn in support by **Rajesh Galot** sworn on 3<sup>rd</sup> November 2014 and 14<sup>th</sup> November 2014 respectively. The plaintiff, **Mohan Galot** swore a replying affidavit sworn on 18<sup>th</sup> November 2014 in opposition to the application filed on 5<sup>th</sup> November 2014 and in response to the affidavit of **Mr. Rajesh Galot** sworn in support of the application.

The Defendant's in the application filed on 5/11/2014 seek the following substantive orders:-

**3. The plaintiff by himself his servants or agents or any of them or otherwise be restrained by a temporary order of injunction from wasting, damaging, removing, disposing, seizing or otherwise interfering with the ownership, occupation, enjoyment and access of the defendants, their family members, agents or servants or any of them from the property known as L.R. NO.7022/7 situated in Kiambu County pending the hearing and determination of the suit.**

**4. An order of Mandatory injunction be issued to compel the plaintiff to remove the police spikes, trench (fill it up) and instruct his armed security guards not to molest or harass the**

**defendants or members of their families.**

**5. The officer commanding Kiambu Police Division be and is hereby directed to assist in the enforcement of the orders above and maintenance of security law and order at the property known as L.R. NO.7022/7 in Kiambu County.**

The Defendants notice of Motion dated 14<sup>th</sup> November 2014 in addition to seeking the above similar orders also seeks orders that the plaintiff does remove his security guards namely **Geoffrey Walela, Simon Mboga** and **Daniel Odongo** who also be declared person non grata on the aforesaid **L.R.NO. 7022/7** the suit property herein.

The grounds upon which the defendants base their application are that the police spikes the plaintiff has placed in the compound are a barrier and curtail and limit the defendants free movement within the compound apart from being a danger and a risk to the defendants children. The defendants also state the guards who man the “**road blocks**” created by the placing of the spikes on the access road are rude and are in the habit of molesting and harassing the Defendants as they access their residences within the compound. The Defendants further state that the plaintiffs have dug a deep trench that is preventing them from having free movement and access and that the trench poses a danger and risk to the members of the Defendants families. Further the Defendants allege that the trench is making it impossible for the Defendants to access the septic tanks for purposes of exhausting sewage and unless remedial action is taken there is a real threat of a serious health hazard arising in the event raw sewage erupts and it is not possible to access the septic tanks for purposes of exhausting them.

The plaintiff in responding to the 3<sup>rd</sup> Defendant’s supporting affidavit and application of 3<sup>rd</sup> November 2014 in his replying affidavit dated 18<sup>th</sup> November 2014 outlines the historical background to this suit. The plaintiff’s view is that the Defendants are not keen and have never been keen to have this matter heard and determined on merits which explains the many interlocutory applications that they have instituted before the court. While the court acknowledges the instant Defendants applications are the reason why the plaintiff’s application dated 28<sup>th</sup> January 2014 seeking a review of the directions given by the court on 12<sup>th</sup> January, 2012 is yet to be ruled on the court is of the view that the circumstances that brought about the institution of the present applications made it necessary to stay the ruling on the review application to dispose of the applications which the court had certified urgent and thus deserving of urgent attention.

The plaintiff in the replying affidavit states the spikes are not placed in the access road so as to deny the defendants access but are on the plaintiffs parking yard and are placed to control entry and exit from the parking area. As regards the trench complained about by the defendants the plaintiff denies that he has dug any trench on the access road on the property and states that the trench is at the backyard of his house and not on the access road. The plaintiff avers that he was in the process of erecting a perimeter wall as per approvals from the **County Government Kiambu** annexed as “**MG11**” and thus the trench was dug pursuant to these works. In regard to the claim by the Defendants that the trench is preventing the exhausting of the septic tanks the plaintiff avers that there is only one manhole for removal of sewage in the suit property and that he is the person who has always undertaken the task of having the septic tanks exhausted whenever it has become necessary to do so and exhibits receipt/invoice marked “**MG13**” confirming exhaustion was carried out on 3<sup>rd</sup> May 2014.

The plaintiff avers that he has employed guards on the suit property to maintain order and to secure the property and denies that the defendants have been harassed and/or molested as claimed and/or that there has been any interference with the defendants access to or exit from the houses they occupy on the suit property and/or to any facilities therein.

Owing to the diverse positions the Defendants and the plaintiff held as to the true state of facts on the ground the court found it necessary to ascertain the actual status of the disputed property on the ground before determining the defendants applications. The court vide an order on 20<sup>th</sup> November 2014 directed the Deputy Registrar of the court to visit the suit property and file a report on the findings to assist the

court to determine the issue in controversy

The Deputy Registrar, **L.M. Wachira (Mrs)** visited the property in the presence of the parties and their advocates on 27<sup>th</sup> November 2014 and the following are her observations and findings:-

**“3. The suit premises has one main gate and an access road runs from the gate, through the front of all the houses occupied by the parties herein and at the far end, the access turns to the backyard where the septic tanks/pits for the houses are situated.**

**4. There is a trench dug on the access as one approached the backyard and therefore no vehicle can be driven past the trench. Meaning that it is impossible to access the septic pits ( for all the occupants to the premises) for purposes of exhaustion.**

**5. There exists a blockage of access to the residences but from the backyard (because of the trench that has been dug). The premises can all be accessed from the front.”**

The parties filed written submissions to ventilate their positions as regards the Defendants applications. I have reviewed the pleadings and the submissions by the parties. The parties have a long and checkered history. They are indeed brothers and one hope that they once enjoyed a cordial relationship as siblings. There are all the hallmarks of such co-existence as the fact that they are living on a common gated property cannot be explained otherwise. Whatever brought about the falling out is not apparent in these proceedings and there are various other court proceedings where the same siblings are at loggerheads. The setting up of 3 Judge bench in **HCCC NO. 55 of 2012** where the siblings are wrangling in what is seen as a matter which could ultimately assist in resolving the majority of the disputes that have been ongoing between the parties once a decision is rendered. The parties submitted to the setting up of the 3 Judge bench by consent. No decision as yet been rendered in the case and the disputes continue unabated in all the forums where they had been instituted.

As observed by the court in its ruling of 6<sup>th</sup> October 2011 in this matter following an application for injunction on virtually similar grounds as in the instant applications, title to the suit land is indeed central to this rather emotive litigation and until the issue of ownership and title is finally resolved the parties are unlikely to achieve a lasting solution. Until such a time as the issue of title is finally determined the parties have to make do with living as they have always lived. It is a fact the plaintiff is registered as the owner of the suit property but the defendant's claim the plaintiff was so registered as a trustee for all the Galot Family members, the proceeds to purchase the suit property having been given by Manchester outfitters Limited which was a family company. The shareholding and directorship of Manchester outfitters Limited are the key issues in HCCC NO. 55 of 2012 pending before the 3 Judge bench.

The defendants thus claim are entitled to a portion of the suit land as beneficiaries of the trust.

I have evaluated the facts and material placed before the court in support of and in opposition to the Defendants application. I am not satisfied a case has been made out for the court to grant what is essentially a mandatory injunction requiring the security guards to be removed, the spikes to be removed and the trench to be back filled. On the issue of security guards the plaintiff is entitled to employ guards to secure the compound as he had done. Of course it is unfortunate that the occupants of the houses in what is essentially a gated compound cannot agree on common security as that would be the ideal situation and beneficial to all the occupants. However, although the defendants claim to have been molested and harassed by the guards there is no evidence that they at any time prevented the defendants from accessing their residences and if the defendants were so molested or assaulted as is suggested there is no report that was made to the police as that would constitute a criminal offence.

As relates to placing of spikes, I again see no issue as it is not suggested that the askaris failed to remove the spikes when somebody was entering or exiting the premises. The spikes as I understand are manned by the guards and there is little possibility that children would play there so that they stand the risk of injury. The issue of security is one that needs not to be compromised particularly where one could be a target for attack. The estate where both the plaintiff and defendant reside could easily be a target for

attack and hence there is need for adequate security.

As concerns the trench I accept the report by the Deputy Registrar that it was at the back yard and no access to the residences was cut off and each residence was accessible from the front. The issue of exhausting the septic tank I feel was exaggerated by the Defendant as the evidence from the Deputy Registrar shows that all the houses share common septic tanks and that indeed the plaintiff had caused the same to be exhausted as recently as May 2014 and it is a known fact that septic tanks take years before they are exhausted depending on the usage.

The plaintiff had submitted that the present applications were res judicata by reason of the ruling made by the court in October 2011. I do not think the present applications were based on the same facts as was the case in the application dated 16<sup>th</sup> February 2010 which was the subject of the ruling. My view is that if there were intervening facts and circumstances, the Defendants could properly bring an application seeking injunctive orders as were sought in the previous application. The defendants position is that there were new set of facts and circumstances that justified the bringing of the application. I agree these facts were fresh and could therefore justify the bringing of the application only if they were proved and established.

In the premises I hold and find that the Defendants have not justified the grant of mandatory injunctions which the court will only grant in plain and clear cases and where there are special circumstances. I am not satisfied the plaintiff set out to frustrate and deny the defendant access to their respective houses. The Deputy Registrar was clear that everybody had access to their houses. The trench in my view did not impede anything and may only have been for a time if it is true the plaintiff was doing a perimeter wall as he stated he was doing.

In the circumstances of this case I would in the interest of justice make an order that the defendants be permitted free and unrestricted access to and use of their residences until the suit is heard and determined otherwise the applications by the defendants dated 3<sup>rd</sup> October 2014 and 14<sup>th</sup> November 2014 are save for the order of access to and use by the defendants of their residences that I have hereby made disallowed.

I direct that each party shall meet their own costs of the applications.

Ruling dated, signed and delivered this.....24<sup>th</sup> ...day of **April**...2015.

**J. M. MUTUNGI**

**JUDGE**

**In the presence of:**

MS Ngania..... For the Plaintiff

Mr. Kaka..... For the Defendants