



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO 164 of 2014**

**JOHN KARIUKI KARANJA.....PLAINTIFF**

**VERSUS**

**JAMES GACHERU MUGO .....1<sup>ST</sup> DEFENDANT**

**JOHN KARANJA KAHORA .....2<sup>ND</sup> DEFENDANT**

**JESSE MAINA NDUATI .....3<sup>RD</sup> DEFENDANT**

**ISAACK K MBUGUA .....4<sup>TH</sup> DEFENDANT**

**LEONARD KIRUI .....5<sup>TH</sup> DEFENDANT**

**JOSHUA MURIITHI MUIGAI.....6<sup>TH</sup> DEFENDANT**

**MS MUNENE JANE.....7<sup>TH</sup> DEFENDANT**

**NJUGU MBOGO.....8<sup>TH</sup> DEFENDANT**

**HIRAM MACHARIA .....9<sup>TH</sup> DEFENDANT**

**PETER MUCHIIRI .....10<sup>TH</sup> DEFENDANT**

***(Application for injunction; plaintiff being owner of suit property; interference by defendants who want to plant a school; nothing filed by respondents to show that the land is set aside for a school; application for injunction allowed).***

**RULING**

1. This suit was commenced by way of plaint filed on 10 June 2014. It is pleaded that the plaintiff is the owner of the land parcel Nyandarua/South Kinangop/471 which he was allocated in the year 1963 through a loan that he paid in installments. It is averred that between 22-30 May 2014, the defendants trespassed into the suit property and destroyed the plaintiff's vegetables and other crops. It is also contended that the defendants fenced off a portion of the said land with intention to set up a school. It is stated that the defendants include civil servants. In the suit, the plaintiff has sought a permanent injunction, vacant possession and/or eviction, mesne profits, costs and interest.

2. Together with the plaint, the plaintiff filed an application for injunction which is the subject of this ruling. In his supporting affidavit, the plaintiff has deposed that he was allocated the land by the Settlement Fund Trustees in the year 1963 through a loan scheme. He together with others settled into the area which was then sparsely populated. The plaintiff and the other settlers had children, but there was no school, and therefore the plaintiff constructed on his land a temporary room to serve as a nursery school. With time, schools were constructed including government schools, and there was therefore no more need for the plaintiff's land to be used as a school. It looks as if a dispute ensued as to whether the school should continue being on the land, and a case was filed, being Miscellaneous Application No. 624 of 1998 (not indicated in which court) by the Chairman of the School, who sued the plaintiff. That matter seems to have abated after the death of the applicant in the said case. The plaintiff has averred that he continued paying his loan and after he completed payment, he was issued with a title deed.

3. It is his contention that he has not sold any part of his land. Despite this, the D.O, Chief and Assistant Chief accompanied by other persons came to his land and forcefully demarcated his land and fenced part of it. Their argument was that the plaintiff's land should be used as a school. The plaintiff has stated that 2 acres of his land have been fenced off without his permission and that unless an order of injunction is issued, the defendants may embark on constructing a school thereon.

4. The State Law office entered appearance for the defendants but no other document has been filed on behalf of the defendants. The averments of the plaintiff are therefore uncontroverted.

5. I have seen from the application and supporting affidavit, that the plaintiff is the registered proprietor of the suit land. I have no reason not to believe him when he states that the land is private land and that the defendants have no legal authority to insist that a school must be constructed on his land. More importantly, the defendants have not tabled anything to show that the suit land, or part of it, has been set aside for public use as a school, or other purpose. From the material before me, all I can see is that the suit property is private land which belongs to the plaintiff. As proprietor, the plaintiff has a right to use the land as he wishes without interference from any quarter. He reserves the right of ingress and egress and the right on how to utilize his land. If he does not wish for there to be a school, that is his right.

6. I am therefore of the opinion that the plaintiff has established a prima facie case with a probability of success. I allow this application and issue an order of injunction stopping the defendants from entering, being upon, fencing, or causing any development or wastage on the land parcel Nyandarua/South Kinangop/471 pending hearing and determination of this suit.

7. The costs of this application shall be costs in the cause.

It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 30<sup>TH</sup> day of June 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**In presence of : -**

Mr Mukira for plaintiff/applicant

Mr Wachira Nguyo of state Law office for 1<sup>st</sup>-5<sup>th</sup>, 7-10<sup>th</sup> defendants/respondents.

N/A for 6<sup>th</sup> defendant who has not entered appearance.

Janet : Court Assistant

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**