



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**CIVIL SUIT NO 293 OF 2013**  
**ENVIRONMENTAL AND LAND COURT**

NICHOLAS KINOTI .....PLAINTIFF

VERSUS

BEACON MANAGEMENT LIMITED.....1ST DEFENDANT

JOEL MUNYUGI M'IMANENE.....2ND DEFENDANT

**R U L I N G**

1. This Application is dated 31st October, 2013 and seeks Orders:

1. ***THAT this application be certified urgent and this Honourable Court be pleased to hear the same ex-parte in the first instance.***

2. ***THAT this Honourable Court be pleased to issue an Order of Injunction to restrain the Defendants, their servants, workmen, licensees, agents or any other person acting on their own behalf or on behalf of the defendants from howsoever trespassing, entering, encroaching, remaining in, selling, subdividing, taking over, dispossessing, alienating, reclaiming, fencing, cultivating, returning into and or harassing the plaintiff or interfering with his peaceful entitlement and possession of LR. NO NYAKI/MUNITHU/1443 and LR. NO NYAKI/ MUNITHU/1444 pending the hearing of this Application interpartes.***

3. ***THAT this Honourable Court be pleased to issue an Order of Inhibition restraining any dealings of any nature whatsoever on LR.NO NYAKI/MUNITHU/1444 without the express approval and consent of the Plaintiff pending the hearing of this Application interpartes.***

4. ***THAT this Honourable Court be pleased to issue an Order of injunction to restrain the Defendants, their servants, workmen, licensees, agents or any other person acting on their own behalf or on behalf of the defendants from however trespassing, entering, encroaching, remaining in, selling, subdividing, taking over, dispossessing, alienating, reclaiming, fencing, cultivating, returning into and and or harassing the Plaintiff or interfering with his peaceful entitlement and possession of LR. NO. NYAKI/MUNITHU/1443 and LR. NO NYAKI/MUNITHU/1444 pending the hearing of this suit.***

5. ***THAT this Honourable Court be pleased to issue an Order of Inhibition restraining any dealing of***

**any nature whatsoever on LR. No NYAKI/MUNITHU/1444 without the express approval and consent of the Plaintiff pending the hearing of this suit.**

**6. THAT the O.C.S -Meru Police Station does assist in enforcement of any order issued herein.**

**7. THAT the cost of this application be borne by the Defendants.**

2. It has the following grounds:-

**(a) That the 2nd Defendant entered into sale agreement with the Plaintiff on 26th March, 2002 for sale of the entire of LR.NO NYAKI/MUNITHU/1444.**

**(b) That despite the Plaintiff faithfully performing all his obligations, the 2nd defendant never gave him title deed to the land.**

**(c) That the Plaintiff has been in occupation of the subject land since March, 2003.**

**(d) That the Plaintiff owns the adjoining land which is LR.NO NYAKI/MUNITHU/1443.**

**(e) The Plaintiff has now discovered that the 2nd Defendant has since sold LR. NO. NYAKI/MUNITHU/1444 to the 1st defendant without consulting him or seeking his approval.**

**(f) The Plaintiff discovered the sale on or about 20th October, 2013 after some unknown persons cut trees, uprooted bananas, fenced off the land, destroyed another part of the fence and cultivated the subject land.**

**(g) The Defendants have actually fenced off both properties and totally denied the Plaintiff access even to the property which he has a title deed.**

**(h) The Defendants are being unreasonable and have become trespassers in the Plaintiff's land.**

**(i) The Defendants are clearly taking advantage of the Plaintiff's absence from the Meru County to perpetuate illegalities.**

**(j) It is in the interests of justice that the instant application be considered and allowed.**

3. The Applicant's case is that he entered into a sale agreement with the Plaintiff on 26th March, 2002 for sale of Parcel No. NYAKI/MUNITHU/1444. He avers that the Plaintiffs never gave him title to the land but says that he has been in occupation of the suit land since March, 2003. He says that he discovered on 20/10/2013 that the 2nd Defendant had sold the suit land to the 1st Defendant without consulting him or seeking his approval.

4. He says that the suit land has been fenced and that the Defendants took advantage of his absence from Meru County to perpetuate illegalities and trespass upon his land. He says that he paid a deposit of Kshs. 30,000/= in 2002 leaving a balance of Kshs. 270,000.

5. The Applicant has proffered several authorities which are good law in proper contexts and circumstances. They are the cases of Francis Muriuki Gikigi & 2 others Versus Richard Muriithi Tiri & Another [2014] Eklr, case of Films Rover International (1986) 3 ALL E.R 722 and Bernard Alfred Wekesa Versus John Murithi Kariuki and 2 others [2000] eKLR.

6. The Respondents submit that parcel No NYAKI/MUNITHU/1444 is registered in the name of the 1st Respondent who also occupies the same. They say that he has been registered owner since February, 2010 and has been in occupation since 4th September, 2009 and has undertaken extensive developments therein.

7. The 1st Respondent submits that he is a bona fide purchaser for value. He alludes to the fact that the 2nd Respondent had entered into a sale agreement with the Applicant in 2002, who had paid a deposit of Kshs. 30,000/= but had refused to pay the balance of Kshs. 270,000/= thus frustrating the agreement as a result of which the 2nd respondent sold the land to the 1st Respondent.

8. The Respondents submit that the Applicant became indolent and deluded himself that he would take the suit land Parcel No. NYAKI/MUNITHU/1444 without paying the balance of the agreed consideration . The Respondents say that the contract between the 2nd Respondent and the Applicant became statutorily barred by dint of the Provision of Section 6(1) of the Land Control Act, Cap 302, Laws of Kenya. The Respondents stress that the contract between the Applicant and the 2nd Respondent was null and void for all purposes.

9. The Respondents submit that paragraphs 3,5,12 and 16 of the 2nd Respondent's Replying Affidavit have not been challenged by the Applicant. They were therefore unopposed. They proffer the case of Tabitha Karimi Munyugi Versus Joel Munyugi M'Imanene & Another (2013) e KLR -Meru, High Court, as their authority in support of their proposition. I do note that the said case involved the suit land, parcel NO. NYAKI/MUNITHU/1444, although the Plaintiff was a different person.

10. They contend that since the agreement between the Applicant and the 2nd Respondent became statutorily barred over 10 years ago AND since the 1st Respondent is not party to the breached agreement between the Applicant and the Respondent , the Applicant holds no cause of action against the 1st Respondent. The Respondents also submit that the Applicant admits that the 1st Respondent is in possession of the suit land and proffer that that is why he prays that “ the Respondents be restrained from “ REMAINING IN” the suit land.

11. The Respondents submit that this Court had an opportunity to consider a similar application over the suit land in Meru High Court Civil Suit No. 60 of 2010 where the defendants in this suit were Defendants in that case.

12. The Respondent submits that the Applicant in that case moved to the Court of Appeal in Nyeri Civil Appeal No 11 of 2013 and the Court of Appeal dismissed her appeal. The Respondent says that the present suit and this Application are meant to circumvent the orders of this Court dismissing a similar Application in Case No. 60 of 2010. They claim that the Applicant is being used by the Plaintiff in case No 60 of 2010 to get the very orders this Court declined to grant.

13. I have carefully considered the pleadings and the respective submissions proffered by the parties, including the authorities they have proffered. I do note that a suit involving the Respondents and a different Applicant went up to the Court of Appeal at Nyeri where the Court of Appeal decided in favour of the Respondents. The suit land was the same as in this suit.

14. I will not at this interlocutory stage make a finding regarding whether or not the Applicant is being used by the Plaintiff in Meru High Court Civil Suit No.60 of 2010 to circumvent the order of this Court dismissing a similar Application and to get the very orders which this Court declined to grant.

I need not reinvent the wheel. I will take the guidance of the Court of Appeal, which in the case of Mbuthia Versus Jimba Credit Corporation [1988] KLR 1 opined as follows:

***“The correct approach in dealing with an application for an interlocutory injunction is not to decide the issue of fact, but rather to weigh up the relevant strength of each side's propositions. The lower court judge had gone beyond his proper duties and made final findings of fact on disputed affidavits.”***

I will not make final findings of fact at this interlocutory stage .

15. I note that the sale agreement between the 2nd Respondent and the Applicant was entered into in 2002. I find that in terms of section 6 and 8 of the Land Control Act, cap 302, laws of Kenya, the apposite agreement became time barred and is, therefore, null and void. This is a point of Law for which this Court

is able to make a final finding at the interlocutory stage.

**16.** I also note that the Applicant only paid a deposit of Kshs. 30,000/= and had not paid the balance of Kshs 270,000/= by the time he alleges that he discovered that the subject land had been sold to the 1st Defendant on 20th October, 2013, eleven (11) years later.

**17.** I am persuaded to agree with the 1st Respondent's proposition that he is in occupation of the suit land. The Applicant does not controvert the 1st Respondents assertion that he is the registered owner of the suit land as a bonafide purchaser for value.

**18.** Taking the totality of all the circumstances in this case as elaborated above, and after weighing the relative weights of the respective parties' propositions , at this interlocutory Stage, I find that this Application lacks merit. Should the Plaintiff eventually win his case, he will be satisfactorily compensated by way of damages. He does not stand to suffer irreparable loss, if an injunction is not granted. I find that his prima facie case is weak. The balance of Convenience tilts in favour of the Respondent who has title to the suit land and is in occupation.

In the Circumstances, **this Application is dismissed with the result that any interlocutory orders in existence are vacated. Most specifically, if any Inhibition is registered against the suit land, the Registrar in Charge of the Registry handling the suit land should remove that Inhibition forthwith.**

**Costs are awarded to the Respondents.**

**It is so ordered.**

Delivered in Open Court at Meru this 30th day of July,2015 in the presence of:

Cc: Lilian/Daniel

Muthomi h/b Kirimi for Plaintiff/Applicant

Kirimi Mbogo h/b Manases for Defendants.

**P.M NJOROGE**

**JUDGE**