



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ELC NO. 100 OF 2007**

**SAMVO LIMITED .....PLAINTIFF**

**=VERSUS=**

**DELTA HAULAGE SERVICES LIMITED.....1<sup>ST</sup> DEFENDANT**

**CATHAM PROPERTIES LIMITED.....2<sup>ND</sup> DEFENDANT**

**[ BY WAY OF ORIGINAL ACTION]**

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**ELC CIVIL SUIT NO.100 OF 2007**

**DELTA HAULAGE SERVICES LIMITED.....PLAINTIFF**

**=VERSUS=**

**SAMVO LIMITED .....1<sup>ST</sup> RESPONDENT**

**THE NATIONAL LAND COMMISSION.....2<sup>ND</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR.....3<sup>RD</sup> RESPONDENT**

**RULING:**

There are two applications herein pending for determination. The first application is the Notice of Motion dated **14<sup>th</sup> January 2014**, brought by the 1<sup>st</sup> Defendant herein, **Delta Haulage Service Ltd**, against the Plaintiff, **Samvo Ltd**, seeking for Injunctive Orders.

The second Notice of Motion was filed on 9<sup>th</sup> May 2014 by the Plaintiff herein **Samvo Ltd**, against the 1<sup>st</sup> Defendant **Delta Haulage Services Ltd** . The said Notice of Motion was amended when **Catham Properties Ltd** was enjoined in the suit as a 2<sup>nd</sup> Defendant. The Motion also seeks for injunctive Orders

against the Defendants.

I will deal with the two Notices of Motion together by way of this Ruling. In the Notice of Motion dated 14<sup>th</sup> January, 2014 , the 1<sup>st</sup> Defendant/applicant (**Delta Haulage Service Ltd** ) has sought for these Orders against the Plaintiff herein;

1. *That the Court be pleased to grant a temporary injunction restraining the Respondent together with their agents, servants and/or employees from alienating, trespassing on, wasting, damaging, developing and/or in any other manner dealing adversely with land parcel known as LR No. 2/75 (Original 2/35/2) situate within Kilimani area Nairobi, pending the hearing and determination of the substantive suit herein.*
2. *That the Officer Commanding Kilimani Police Station, Nairobi to ensure compliance with the Orders issued herein.*
3. *That cost of this application be provided for.*

The application is premised on the grounds stated on the face of the application among them being that;

1. *The applicant is the registered proprietor of all that parcel of Land known as LR No. 2/75 ( Original 2/35/2), having been allocated the same pursuant to a letter of allotment dated 1<sup>st</sup> July 1999, issued to one **Ali Mohammed Egal**, by the Commissioner of lands.*
2. *That upon being allocated the suit property, the applicant complied with the terms and conditions in the letter of allotment and paid all the requisite charges as demanded by the Commissioners of lands. The land was thereafter transferred to the applicant in a Memorandum of the Registration by transfer of land by the Government of Kenya.*
3. *That upon transfer of the suit property to the applicant, the applicant applied for the sub division of the same into two plots which subdivision was approved by the Commissioner of Lands and the applicant was issued with Deed Plan by the Director of Surveys and therefore the applicant is the legal owner of the suit property and is currently in physical possession of the same.*
4. *That despite the fact that the applicant is in physical possession of the suit property, the 1<sup>st</sup> Respondent, its agents, servants and/or third parties claiming under it have constantly trespassed into the suit property using youths and armed with crude weapons with a view to have physical possession of the same.*
5. *Further, that it is imperative therefore that the Respondents be restrained by an order of temporary injunction from interfering with the applicant's quiet and peaceful enjoyment of the suit property, pending the hearing and determination of the substantive suit.*

The application is also supported by the supporting affidavit of **Ali Mohammed Egal**, who averred that he is a Director of the 1st Defendant, **Delta Haulage Services Ltd**. He further averred that he took possession of the suit property in 1985 and the suit property was allotted to him on 1<sup>st</sup> July 1999 after applying for the same on 5<sup>th</sup> April, 1996 as evidenced by annexure "**AME1**". He also averred that he nominated **Delta Haulage Service Ltd**, on 10<sup>TH</sup> September, 2001 as beneficiary of the allotment letter dated 1<sup>st</sup> July 1999 as evidenced by annexure '**AME3**'. Further, that the applicant met all the conditions set out in the letter of allotment by paying all the requisite charges as demanded as per annexure "**AME**".

It was his contention that the suit property was subdivided into two portions and the Director of Survey issued him with Deed Plans. Applicant was later issued with new title documents for the suit property on 19<sup>th</sup> December, 2006 and therefore the applicant acquired indefeasible interest over the suit property which is known as **LR No. 2/75, Ndemi Road** situated at Kilimani in Nairobi area – See **annexure 'AME7'**.

The applicant also stated that he paid all the rates to the City Council of Nairobi and Land Rent to the 2<sup>nd</sup> Respondent as evidenced by annexures “**AME 9 and 10**”. Therefore, the 1<sup>st</sup> Respondent claims of ownership of **LR No. 2/75, Ndemi Road** is misplaced since the suit property has already been subdivided into two portions with the approval of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and the 1<sup>st</sup> Respondent has never at any given time been in possession of the suit property and the title that it hold if any is a forgery. Applicant further stated that prior to the institution of the suit; the applicant has been in peaceful occupation and possession of the suit property since 1985 without any interference from the Respondents or any other third parties. The Applicant urged the Court to issue the Orders sought to protect the substratum of this suit against property adverse action and/or interference from the Respondents. It was his further contention that the applicant is the registered owner of the suit property and ought to be allowed quiet and peaceful possession of the same pending the hearing of the substantive suit.

The Plaintiff/1<sup>st</sup> Respondent, **Samvo Ltd**, opposed this Notice of Motion. ‘**Jagjit Singh Ahluwala**, swore a Replying Affidavit and averred that he is the Director of the Plaintiff Company. He denied that the 1<sup>st</sup> Defendant, **Delta Haulage Services Ltd**, is the registered proprietor of any Land whether known as Land Ref No. 2/75 ( Original 2/35/2) or that the 1<sup>st</sup> Defendant acquired the same by the Memorandum of the Registration of Transfer of Land by the Government of Kenya as alleged by the applicant. He further averred that the land in question belongs to **Samvo Ltd** and the same has been entered in the Register of the government Lands as the property of the Plaintiff/Respondent herein. Further, that **Samvo Ltd** has paid the rates regularly since 1999 when it became the owner and it is therefore the lawful owner of the property and cannot lawfully be restrained by an injunction. The deponent therefore urged the Court to dismiss the 1<sup>st</sup> Defendants application dated **14<sup>th</sup> January, 2014** with costs to the Plaintiff/Respondent.

In the 2<sup>nd</sup> Notice of Motion the Plaintiff/Applicant herein **Samvo Ltd**, has brought an amended Notice of Motion under Sections 1A, 1B, and 3A of the Civil Procedure Act and Order 40 Rules 1,2, 4 &5 and Order 51 of the Civil Procedure Rules seeking for these Orders against the Defendants;

- 1. That upon hearing the parties inter-parties it be ordered that the 1<sup>st</sup> Defendant /Respondent and the 2<sup>nd</sup> Defendant/Respondent by themselves, their offices, agents, servants, workers or assigns or otherwise be restrained from developing or interfering in any manner whatsoever with the suit premises hereto known as Land Reference No. 2/75 Ndemi Road(Formerly known as Kitchener Road),Nairobi pending the hearing and determination of the present suits, Case No. 100 of 2007 and Case No. 326 of 2012.**
- 2. That the Status Quo of the suit premises be maintained pending the Ruling to be delivered in Nairobi, ELC case No 326 of 2012.**
- 3. That the Officer Commanding Police Division Kilimani Police Division, Nairobi aided as may be necessary by the Officer Commanding Police Station, Milimani, Nairobi and such other officers and personnel as may be necessary do assist court process servers and others commanded or required by the court to serve and enforce the Orders herein.**
- 4. That the costs of this application be borne by the Defendants/ Respondents.**

The application was supported by the grounds stated on the face of the application and also by the annexed affidavit of **Jagjit Singh Ahluwala** sworn on **9<sup>th</sup> May, 2014**, and the further affidavit of **Stephen Musalia Mwenesi** Advocate. The grounds in support are;

- 1. That there are two suits pending before the court touching on the suit premises, namely land Reference No. 2/75 Ndemi Road, Nairobi which has since been converted to a new land Register and is known as Nairobi/Block VXII/338.**
- 2. That in one of the suits, ELC No. 326 of 2012, the 1<sup>st</sup> Defendant has applied for orders that it be disclosed as the proprietor of LR No. 2/75 Ndemi Road and also asked the Court to restrain**

***Samvo Ltd and officials of the lands department from dealing with unknown properties LR. NO. 2/694 and LR NO. 2/695. The Court was also asked to find that the Title of Samvo Ltd was irregularly acquired and therefore null and void.***

3. ***That the Respondents have continued to carry activities on the suit premises by putting up permanent structures.***
4. ***Further, there is hoarding erected as a permanent development on the premises and the Plaintiff's trees have been cut down and the building has been vandalized by the Defendants/Respondents, their agents, or workmen.***
5. ***That the Plaintiff is apprehensive that the development is being done hurriedly to subvert justice and in a bid to take advantage of situation at the Land Registry Nairobi.***
6. ***That it is in the interest of all the parties herein that the Status Quo be maintained pending the hearing and determination of the present suits, ELC NO. 100 of 2007 and ELC No. 326 of 2012.***

In his Affidavit, the deponent herein, **Jagjit Singh Aluwala** averred that he is the Director of the Plaintiff Company and that he is aware of the two suits pending before the Court touching on land Reference No. 2/75 ( original 2/35/2/ namely Nairobi High Court, **ELC No. 100 of 2007** and Nairobi High Court **ELC No. 326 of 2012**. He also averred that the Land is registered as **Nairobi /Block XVII/338**, in favour of **Samvo Ltd** which cannot be interfered with unless illegally and constitutionally acquired. Further that he was aware that, **Delta Haulage Services Ltd** has filed an application in court asking the Court to declare it as the owner of the suit premises and to order the **National Land Commission** to issue Title Deed to it. Further, that **Delta Haulage Services Ltd** had asked the Court to declare that **Samvo Ltd's** Title was irregularly acquired and therefore null and void.

It was his contention that there is an Order issued by **Justice Osiemo** in the year 2007 requiring that **Status Quo** to be maintained and yet the Defendants have gone ahead and started to develop the land. It was his further contention that the pending suits go to the very root of the entire matter and if the Defendants continues interfering with the suit property, it will inevitably subvert justice and render the suits of no use and nugatory. He urged the Court to maintain **Status Quo** for the interest of Justice.

On his further supporting Affidavit, **Stephen Musalia Mwenesi**, averred that he is an Advocate of the High Court of Kenya having the conduct of this suit. Further that on 20<sup>th</sup> May 2014, **Catham Properties Ltd**, was enjoined as a party to this suit but it did not exhibit any title documents. He urged the Court to issue the Orders sought for, pending the hearing and determination of the suits which would determine who has genuine claim and title to the property.

The application is opposed by both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. **Mr Ali Mohammed Egal**, swore a Replying Affidavit on behalf of the 1<sup>st</sup> Defendant and **Li Wen Jie**, swore a Replying Affidavit on behalf of the 2<sup>nd</sup> Defendant.

On his Affidavit, **Li Wen Jie** averred that the 2<sup>nd</sup> Defendant is the undisputed owner of the property **LR No. Nairobi/Block 17/556** and **Nairobi/Block 17/557**. He further averred that the 2<sup>nd</sup> Defendant purchased the two parcels of land after carrying out due diligence in November, 2013. That after the purchase, there was a proper transfer of the said two parcels of land from the previous owners to the 2<sup>nd</sup> Defendant as evidenced by annexure "**LWJ 1**". He further contended that the 2<sup>nd</sup> Defendant is a bonafide purchaser, and registered owner and proprietor of the properties aforesaid. It was his contended that 2<sup>nd</sup> Defendant is a stranger to the averments as contained in the plaintiff's Affidavit.

The deponent further averred that 2<sup>nd</sup> Defendant is not privy to the dispute between the Plaintiff and the 1<sup>st</sup> Defendant and that the said dispute should not affect the interests of the 2<sup>nd</sup> Defendant in **LR No.**

**Nairobi/Block 17/556** and **Nairobi /Block 17/557** and no order should encumber the two parcels of Land which are properly and legally registered in the name of the 2<sup>nd</sup> Defendant. It was further contention of the deponent that the 2<sup>nd</sup> Defendant is in possession of the suit properties **LR No. Nairobi/Block 17/556** and **Nairobi / Block 17/557** that was properly and legally acquired and development commenced. It was also further contended that the Plaintiff and 1<sup>st</sup> Defendant are fighting over property that is quite different from the one in possession of the 2<sup>nd</sup> Defendant and the injunctive Orders should not extend to the two parcels of **Land-Nairobi/ Block 17/556 and (Nairobi- Block- 17/557)** in possession of the 2<sup>nd</sup> Defendant. He urged the Court to declare that the injunctive Orders in place do not relate to the two properties aforesaid.

In his further Affidavit, **Jagjit Singh Ahluwala**, averred that the activities by 2<sup>nd</sup> Defendant should be halted as they are illegal. He further stated that the 2<sup>nd</sup> Defendant cannot extricate itself from the dispute over **Samvo Ltd** properties as the land the 2<sup>nd</sup> Defendant has allegedly occupied and acquired titled deed for is the same **Nairobi/Block XVII (17) 338** formerly **LR No. 2/75**. Further, he stated that the injunctive Orders in place affect all the parties to the suit and should be maintained and sustained until the suit is determined.

**Li Wen jie**, filed a further Affidavit in response to **Jagjit Singh Ahluwala** Affidavit. He denied that the 2<sup>nd</sup> Defendant is engaged in any illegal and/or fraudulent activities as alleged and he further stated that there was no need of halting the activities by the 2<sup>nd</sup> Defendant on the suit properties. It was further also the properties were legally and properly purchased from the original owners after due diligence to ascertain ownership. Therefore the 2<sup>nd</sup> Defendant is a bonafide purchaser for value of the two properties- **Nairobi Block 17/556 and Nairobi /Block 17/557** as per **annexture' LWJ6'**. He further contended that the 2<sup>nd</sup> Defendant has legitimate title transferred from the original owners and therefore the interest of 2<sup>nd</sup> Defendant in the two parcels of land is absolute and the Plaintiff's and the 1<sup>st</sup> Defendant cannot claim any interest therein. He further urged the court to dismiss the Plaintiff's application.

On his Replying Affidavit, on behalf of the 1<sup>st</sup> Defendant **Ali Mohammed Egal**, averred that the suit property belongs to the 1<sup>st</sup> Defendant and he has been in possession of the same since 1985. That he was eventually issued with a letter of allotment by the Commissioner of Lands on 1<sup>st</sup> July 1999. He further averred that the 1<sup>st</sup> Defendant's title to the suit property is indefeasible as it was allocated the same in the year 1999 and has been in actual and physical possession of the same as the legal owner until December, 2013 when the agents of the 2<sup>nd</sup> Defendant with the assistance of the police officers forcefully trespassed on the suit property and evicted the employees of the 1<sup>st</sup> Defendant and took possession of the same. It was his contention that the suit property is **LR No. 2/75, Ndemi Road** and not **Nairobi Block 17/556 and Nairobi Block 17/557**, as alleged by the 2<sup>nd</sup> Defendant . It was his further contention that the 2<sup>nd</sup> Defendant has illegally invaded the suit property which has caused the 1<sup>st</sup> Defendant substantial loss and damage to his permanent building which had been constructed on the suit property. The 1<sup>st</sup> Defendant urged the Court to dismiss the Plaintiff's Notice of Motion and allows its application dated 14<sup>th</sup> January, 2014.

The counsels herein consented to canvass the two applications at the same time. The applications were disposed of by way of written submissions which I have now carefully considered. I have also considered all the pleadings herein, the annexures thereto and the relevant laws and I make the following findings;

In the two applications; each of the party herein is seeking for injunctive Orders against the other party. In the amended application dated 27th May, 2014, the 2<sup>nd</sup> Respondent is opposed to issuance of any injunctive Orders. Since the parties herein are seeking for similar orders against each other, I propose to deal with the two applications simultaneously.

The applicants in the two applications have basically sought for injunctive orders. These are equitably remedies that are granted at the discretion of the Court. However, the said discretion must be exercised

judicially. See the case of **Hasmukh Khetshi Shah Vs Tinga Tranders Ltd, Civil Appeal No. 326 of 2002 (2002) KLR 4628** where the court held that;

***“ The conditions for granting of a temporary injunction in East Africa are well known and these are; First an applicant must show prima facie case with a probability of success. Secondly an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience”***

Have the applicants herein established the above stated conditions to warrant this Court grant them the Orders sought?.

Firstly, the applicants needed to demonstrate that they have a prima facie case with probability of success. The above position was emphasized in the cases of **Stanley Munga Githunguri Vs Jimba Credit Corporation Ltd , Civil Appeal No. 144 of 1998 and Teresia Shitakha Vs Mary Mwamodo and others (1986) KLR 445** where the Court held that;

***“ At this stage of the application for injunction , all that the Court is required to do is to determine whether the plaintiff has presented a prima –facie case which may well succeed”***

Have the applicants herein presented a prima facie case with probability of success?

Prima Facie case was described in the case of **Mrao Ltd Vs First American Bank of Kenya and 2 others (2003) KLR 125**, as;-

***“That the Defendant/Respondent be and is hereby restrained from wasting, damaging, and , alienating the suit property being LR No. 2/75 Ndemi Road Nairobi until this suit is heard and determined”***.

It is also evident that the 1<sup>st</sup> Defendant herein also claims ownership of the said suit property. The 1<sup>st</sup> Defendant has also filed ***ELC No. 326 of 2012*** which I am called upon to determine together with this Ruling. In ***ELC No. 326 of 2012*** , the 1<sup>st</sup> Defendant has sought for injunctive Orders against the Plaintiff herein and also for an Order that it be declared the sole registered owner of ***LR No. 2/75, Ndemi Road Nairobi*** .

It is not in doubt that both the Plaintiff and the 1<sup>st</sup> Defendant are each claiming title to the suit land Plot No. 2/75 Ndemi Road Nairobi. There is no doubt that the 2<sup>nd</sup> Defendant ***Catham Properties Ltd*** is also claiming ownership of the said suit land, though now with new title numbers being ***Nairobi Block 17/556***, and ***Nairobi Block 17/557***. The second Defendant has alleged that it acquired the suit property from ***Alexander Kungu Maina and Christopher Mungonye Wamae*** in January 2013. It is also evident that the 2<sup>nd</sup> Defendant was incorporated in Kenya on 17<sup>th</sup> January, 2014 long after the suit property was allegedly sold to one ***Li Wen Jie*** by ***Alexander Kungu Maina and Christopher Mungonye Wamae***, on 13<sup>th</sup> January, 2013 as per the sale agreement. By the time the suit land was sold to the 2<sup>nd</sup> Defendant in the year 2013 or 2014 this suit was still pending in Court.

From the above analysis of facts, it is evident that each of the party herein is claiming ownership of this parcel of land. Each of the party herein has documents of ownership. However, at this stage of interlocutory application, I am aware that the Court is not required to determine the very issue which will be canvassed at the trial with finality. See the case of **Edwin Kamau Muniu Vs Barclays Bank of Kenya Ltd, Nairobi ( Milimani) High Court, Civil case No. 1118 of 2002**, where the Court held,

***“In an interlocutory application, the Court is not required to determine the very issues which will be canvassed at the trial with finality”***.

Further, the Court is not required to make any conclusive findings of fact or law without the benefit of

hearing evidence from the parties involved. The above position was held in the case of **Airland Tours & Travel Ltd Vs National Industrial Credit Bank, Nairobi (Milimani) High Court, Civil Case No. 1234 of 2002, where the Court held that:-**

***“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—***

***b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.***

Though the certificate of title issued by a Registrar to a purchaser shall be held by the Courts as prima facie evidence of absolute and indefeasible proprietorship, the said certificate can be challenged on grounds of **fraud** or **misrepresentation** as provided by **Section 26(1) (a) and (b)** of the said **Land Registration Act**. The parties herein have alleged fraud on registration of the other party's certificate of title.

The allegations of fraud or misrepresentation can only be proved through calling of evidence. The parties herein need to call evidence through the full hearing of the main suit and then the said evidence is tested and interrogated through cross – examination. Though **Catham Properties Ltd** alleges that it is now registered as a proprietor of the suit land, that certificate of title can be challenged in Court if there are allegations of **fraud, misrepresentation** or if the same was not acquired procedurally (See Section 26 (1) a & b )of the Land Registration Act. The Plaintiff **Samvo Ltd** alleges that it acquired the suit land procedurally by way of purchase from one **Swarana Davi Vohra** on **8<sup>th</sup> June 1999** by way of conveyance registered on 22<sup>nd</sup> December 1999, in accordance with the Government Land Act. On their part, 1<sup>st</sup> Defendant, **Delta Haulage Service Ltd**, alleges that they were legally allotted the suit land by the Commissioner of Lands in the year 1999. It further alleged that it has been in possession of the suit property since 1985 and applied for its allocation in 1996 through **Ali Mohammed Egal**, a Director of the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant also alleges that it acquired the suit property in the year 2014 through purchase from **Alexander Kungu Maina** and **Christopher Mugonye Wamae** in the year 2013 through its Director **Lie Wen jie**

From the above allegations, there are contradictory and disputed facts which can only be resolved by calling of evidence and interrogating the same. 2<sup>nd</sup> Defendant had alleged that the properties that it allegedly purchased are **Nairobi /Block 17/557**, and not **Nairobi/Block 17/556** and **LR No. 2/75 Ndemi Road** as claimed by the Plaintiff and 1<sup>st</sup> Defendant. However, it is evident that the substratum or the suit property is the same that is being claimed by the Plaintiff and the 1<sup>st</sup> Defendant since the year 2007 when the suit herein was filed in court.

The above dispute of whether the suit property is **LR No.2/75** or as alleged by the **Catham Property Ltd** can only be resolved by Officials from the Ministry of lands. The said officials can only do so by giving evidence in Court at the full trial of this suit. At this stage, the court cannot find conclusively who is to be believed or not.

For the above reasons, the Court finds that none of the parties herein has established a prima facie case with probability of success.

On the second issue of whether applicants will suffer irreparable harm which would not be adequately compensated by the award of damages, I find that at this juncture, there is still a big question of who actually owns the suit property. The property is situated at the high end part of Nairobi City where the value of the land keeps on skyrocketing. The Court cannot find and hold that damages would be adequate remedy for either the plaintiff or the 1<sup>st</sup> Defendant herein.

On the balance of convenience, the Court finds that, there is no doubt that the matter has been in Court since the year 2007. There is an injunction Order that was issued by the Court on 19<sup>th</sup> April, 2007. The said injunction has never been lifted. From the reading of the Court files, it seems the 1<sup>st</sup> Defendant herein was in possession of the suit land though he was enjoined from damaging, wasting and or alienating the suit land by the Court Order issued by Osiemo J on 19<sup>th</sup> April, 2007. The said Order has never been set aside or varied. However, the 1<sup>st</sup> Defendant filed another suit herein being ELC No. 326 of 2012 . Though **Catham Ltd Properties** had alleged that it is in actual possession of the suit property, it is evident that it entered into the suit land during the pendency of this suit and while there was an existence of a Court Order issued on 19<sup>th</sup> April, 2007 by Osiemo J. The acquisition of this Suit land by 2<sup>nd</sup> Defendant would therefore be questionable and subject of this challenge in Court. The how and whether 2<sup>nd</sup> Defendant acquired good title after purchase in the year 2013 can only be interrogated and determined by calling of evidence. However, it is important to preserve the suit property until the suit is heard. In the instant suits, the Court finds that the best way of preserving the suit is by maintaining of **Status Quo** that was prevailing at the time the injunction Order was issued by the Court on 19<sup>th</sup> April 2007.

From the above analysis of the facts, I find that the balance of convenience tilts in favor of maintaining of **Status Quo** that was prevailing prior to the entry into the suit land by the 2<sup>nd</sup> Defendant.

The parties herein should set the matter down for hearing the soonest possible. I therefore direct and order that this matter do proceed for hearing the soonest to enable this Court make a final and informed determination of the issues in dispute. I will rely on the case of **Ougo & Another Vs Otieno (1987) KLR 1** where the Court held that:

<p 40px;"=""> ***“...the general principal is that where there is serious conflict of facts, the trial court should maintain the status quo until the dispute has been decided in a trial.”***

Having now considered the pleadings herein, the written submissions, and the annexures, the Court directs that in the two Notices of Motion dated 14<sup>th</sup> January 2014 and the amended one dated 27<sup>th</sup> May, 2014 by the Plaintiff, the **Status Quo** should be maintained and the **Status Quo** is that which was prevailing as at 19<sup>th</sup> April, 2007 when injunctive Orders were issued in Court and which also prevailed before the 2<sup>nd</sup> Defendant took possession of the suit Land. Further the Court directs that no party shall have any dealings and/or in any way interfere with the suit property until the suit is heard and determined.

Costs shall be in the cause.

It is so ordered.

Dated, Signed and delivered this **27<sup>th</sup> day of October, 2014**

**L. GACHERU**

**JUDGE**

In the Presence of:-

Mr .Mwenesi for the Plaintiff/ Applicant /Respondent

Mr. Owang for the 1<sup>st</sup> Defendant/Applicant/Respondent

Mr Kenyariri for the 2<sup>nd</sup> Defendant/Respondent

Mr. Muntari 3<sup>rd</sup> Defendant/Respondent

Kamau: Court Clerk

**L. GACHERU**

**JUDGE**