

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 651 of 2012

ELIAS MAINA MUTHUMBI.....PLAINTIFF/RESPONDENT

VERSUS

MAHIIRA HOUSING COMPANY LTD.....DEFENDANT/RESPONDENT

RULING

Before me is a Notice of Motion dated the 1/10/12. The plaintiff/applicant is seeking the following orders that the defendant/respondent, his agents, associates, servants, employers and or doing anything adverse to the plaintiff's interest namely plot No. 796 on L.R No. 1090/37 south of Ruiru Town title No. 796 on L.R. 10901/37 until the suit is heard and determined.

The applicant also seeks that officer commanding Ruiru Police station and Kahawa police post supervise the effecting of this order and that costs provided for. The application is grounded on ground (a) to (f) which are stated on the face of the application.

The defendant's company director Mr. Mahiira was served with the application but the defendant failed to attend the hearing of this application neither did it file any papers.

The plaintiff filed a supporting affidavit in support of his application dated 1/10/12. In his affidavit he avers that he is the legal and registered owner of plot no. 796 on L.R.10901/37 Kahawa south of Ruiru Town. To demonstrate this he has attached plot certificate No. 796 issued by Mahiira Housing Company dated 4/2/98 which shows that he owns plot No. 796 on L.R 10901/37 at Kahawa South of Ruiru Town. He avers that he has paid all the required fees to be allowed the said plot. To demonstrate this he has attached receipts payments made to Mahiira Housing Company annexure 2 & 3. He avers that defendants has without any colour of right trespassed on the said title and erected building structures on the same, that the defendants, agents have since 1989 without any colour of right have trespassed on his said title. At paragraph 5 to 8 the plaintiff explains the issues he has had with the defendant of trespass, want on destruction, threat to stay and interference with his efforts to develop the plot and thus interfering with his quite enjoyment of the suit property. He explains that he will suffer irreparable damage not capable of being compensated by way of monetary value.

What the applicant has deponed was not controverted by the defendant/respondent. Annexure "EMM1" shows that he is entitled to a portion of the land plot No. 796 on L.R 10901/37. He alleges interference by the defendant's agents. The plaintiff is entitled to some protection. He has demonstrated that he has a prima facie case with a probability of success. He avers he will suffer irreparable damages. So far from what is deponed the balance of convenience tilts in his favour. He has shown that his case falls within the principles of the case of Geilla vs. Cassman Brown 1973 E. A.

I find merit in the application and grant the applicant prayer 3 that the defendant/respondent its agents, associates, servants employees shall not do anything adverse to the plaintiff's interest in namely plot no. 796 L.R 10901/37 Kahawa South of Ruiru Town until the suit is heard and determined. Prayer No. 4 is granted. Costs shall be in the cause

Dated , signed and delivered **26th** day of **October** 2012

**R. OUGO
JUDGE**

In the Presence of:-

..... For the plaintiff

..... For the Defendant

..... Court Clerk