



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Environmental & Land Case 278 of 2012**

**JAMES MURIUKI NTUARA.....PLAINTIFF**

**VERSUS**

**EMBAKASI RANCHING COMPANY LIMITED.....DEFENDANT**

**RULING**

James Muriuki Ntuara the plaintiff/applicant has filed suit against the defendant Embakasi Ranching Company Ltd. In his plaint dated 18/5/12 the plaintiff seeks that he be declared as the lawful exclusive owner /allotee of plot No. 09836B/H Map situate with the defendant's ranch. He also seeks an order of permanent injunction against the Defendant. At the time of filing suit the plaintiff/applicant also filed the notice of motion dated the 18/5/12. The motion is brought under order 40 rules 1, 2, 3 & 9 of the Civil Procedure Rule and section 3A of 63 (3) of the Civil Procedure Act. Prayer No. 1 & 2 are spent. The plaintiff/applicant at prayer 5 is seeking an injunction against the defendant, its agent, servants, employees and/or shareholders claiming interest under her from evicting the plaintiff, entering, selling, transferring, trespassing, alienating, damaging and/or developing any further or destroying the developments in the plaintiff's plot No. U9836 B/H Map within Embakasi Ranching Company Ltd pending the hearing and determination of the plaintiff's suit. He also seeks costs of the application.

The application is premised on grounds (a) to (g) on the face of the application.

The defendant was served. Their counsel filed a notice of appointment. The defendant did not respond to the application even after this Court gave their counsel time to do so.

The applicant avers as follows; he is a shareholder of the defendant company under share certificate No. 023725. He was allotted a plot by the defendant after paying the requisite fees. A surveyor assigned by the defendant company took him to the site of the plot and identified it to him i.e plot No. U9336. Thereafter he took possession of the said plot and cleared it, fenced it and planted Kariaria and has enjoyed possession for the last 3 years. What has now made him come to Court is that the defendant sent its workers to the plot to cut all the tress and vegetation. On the 4/5/12 he was informed that the defendant had placed a far sale sign on his plot. He has tried to solve the problem with the defendant through the provincial administration but it has been in vain as the defendant is bent on grabbing his plot. That the defendant's actions to trespass are unlawful and illegal as his plot is not available for allocation to another shareholders. That he has established a prima facie case against the defendant which has high chance of succeeding.

The plaintiff is seeking an injunction. He has to establish that he has a prima facie case with a probability of success and secondly that he will suffer irreparable damages and if the Court is in doubt it will decide the case on a balance of convenience. The plaintiff has exhibit on non-member certificate of plot owner from plot No. 9836 the suit land. The receipt was issued by the defendant company to the plaintiff. It shows that he paid for survey and engineering on the 21/10/11. He has also annexed on allocated document showing plot No. U9836 was allocated to J. Kamau, he has also attached copies of photographs of a place that appears to be bushy and is being cleared and on the other with a for sale sign. So far the plaintiff has on what is deponed established a prima facie case with a probability of success. He has demonstrated he has a beneficial interest in the suit land .He avers he has been in possession thus he is likely to suffer loss and damage. The balance of convenience tilts in his favor. I decline to grant prayer 4 as the plaintiff has not shown that he will face hostility in serving the order.

An injunction shall issue against the defendant its agents, servant, employees and/or shareholders claiming interest it from evicting the plaintiff, entering, selling, transferring, trespassing, alienating, damaging and or developing any further or destroying the developments in the plaintiff's plot No. V9836 B/H Map within Embakasi Ranching Company Ltd pending the hearing and determination of the plaintiff's suit. Costs shall be in the cause.

Orders accordingly.

Dated, signed and delivered this 30<sup>th</sup> day of November 2012.

**R. OUGO**  
**JUDGE**

In the Presence of:-

.....For the Plaintiff/ Applicant

.....For the Defendants / Respondents

.....Court Clerk