



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**LAND AND ENVIRONMENTAL LAW DIVISION**  
**CIVIL SUIT (ELC) NO. 532 OF 2009**

**ELIJAH KARIUKI KURIA.....PLAINTIFF/APPLICANT**

**VERSUS**

**KENNETH OBAE.....DEFENDANT/RESPONDENT**

**R U L I N G**

1. Elijah Kariuki Kuria (hereinafter referred to as the applicant) is the plaintiff in this suit. He is seeking an interlocutory injunction against Kenneth Obae (hereinafter referred to as the respondent), who is the defendant in the suit. The applicant seeks an injunction restraining the respondent, his agents or assigns from interfering, dealing, constructing, erecting structures or in any way interfering with the applicant's quiet possession of LR No.21190/111/109 (hereinafter referred to as the suit property), pending the hearing and determination of the applicant's suit.
2. The applicant contends that he is the beneficial owner of the suit property which is a sub-plot hived out of LR No.21190 registered in the name of National Social Security Fund Board. The applicant claims that he was granted full possession of the suit property by National Social Security Fund Board of Trustees and is awaiting approval from the Nairobi City Council to have the suit property registered in his name.
3. Sometimes on or around 8<sup>th</sup> February, 2008 the respondent wrongfully entered and took possession of the suit property. He thereafter started undertaking some construction on the suit property. The applicant reported the matter to the police, but the police could not resolve the matter. The applicant therefore filed a suit in the Chief Magistrate's Court and obtained interim orders barring the respondent from entering the suit property. The applicant was however forced to withdraw the suit when the respondent challenged the jurisdiction of the magistrate's court to hear the matter.
4. The applicant has now moved to this court and urges the court, that unless the respondent is restrained by the court, he will resume the wrongful occupation of the suit property, and complete the construction which he had commenced. The applicant maintains that should that happen he will suffer irreparably as he will lose his livelihood and dignity. The applicant has exhibited a tenant purchase agreement signed between him and the National Social Security Fund Board of Trustees in regard to the suit property.
5. The respondent objects to the application through a replying affidavit sworn on the 11<sup>th</sup> May, 2011. He

maintains that the application is incompetent, misconceived, fatally defective, frivolous and lacks merit. He contends that the applicant has not demonstrated the loss or irreparable damage that he stands to suffer if the order sought is not granted. The respondent accuses the applicant of concealment of crucial evidence with the aim of misleading the court. The respondent swears that he purchased land known as LR.21190/111/107 – 110 and LR.21199/111/170-171/1 which were 6 plots, from Kwa Ndege Self Help Group in the year 2002. He thereafter started developing the plots by excavating the black cotton and filling with hardcore. The respondent avers that he has put up 4 apartments in 4 of the plots and has retained the remaining two plots one of which is the suit property as a parking lot. The respondent states that he has spent millions of shillings in putting up the apartments and therefore stands to suffer irreparably by interference likely to arise from the applicant's claim. The respondent explains that the issue of registration with NSSF, ownership and sell of plots is a subject which is pending in court.

6. Each party's counsel has filed written submissions urging the court to find in favour of his client. I have given due consideration to this application, I have also considered the submissions and the authorities cited. It is evident that both the applicant and the respondent are claiming ownership of the suit property. The applicant has exhibited a letter from National Social Security Fund Board as well as a copy of a tenant purchase agreement signed between the appellant and the National Social Security Fund Board indicating that the ownership of the suit property is in the process of being transferred to the applicant. I note that the tenant purchase agreement exhibited by the applicant is neither stamped with stamp duty nor is it registered against the title. This makes the document inadmissible in evidence. Be that as it may, even without the tenant purchase agreement the letter dated 9<sup>th</sup> February 2008 confirms that the applicant had registered with NSSF and paid a deposit for the plot. A copy of a title has been exhibited which shows that NSSF is actually the registered owner of the whole land parcel No.21190.

7. Although the respondent claims to have bought the suit property from Kwa Ndege Self Help Group, he admits that the issue of the registration with NSSF ownership and sale of plots is a subject still pending in court. Moreover, the respondent has not exhibited any document to show that Kwa Ndege Self Help Group had any registrable or beneficial interest that they could transfer to the respondent.

8. I find that on the information laid before this court, the applicant has demonstrated that he has an interest in the suit property which interest is likely to be substantially prejudiced by the actions of the respondent. It is not disputed that the respondent is presently in occupation of the suit property and that the respondent had commenced construction. If the injunctive orders are not issued the respondent is likely to proceed with the construction and this may change the character of the suit property to the detriment of the applicant. It is evident that the Tenant Purchase Agreement places a value on the suit property, land in Kenya is however known to appreciate very quickly. There is also the sentimental attachment that one may have to a particular place. These are not losses that are easily quantifiable.

9. On the issue of balance of convenience, it is evident that the respondent has already commenced construction and has no doubt spent a substantial amount in the investment. Be that as it may, the respondent undertook a risk of constructing on a plot whose title he did not have. Moreover, the respondent has indicated in his affidavit that his main construction i.e. the apartments are on the other 4 plots and that he intends to use the suit property and another plot as a parking lot. This then means that an order of interlocutory injunction with regard to the suit property will not substantially interfere with the respondent's construction. In my considered view the balance of convenience is in favour of the order of interlocutory injunction being issued in regard to the suit property.

10. Nonetheless, in view of the fact that the respondent is the one in possession of the suit property, and taking into account that the applicant has not revealed when he was given possession of the suit property by NSSF, and how and exactly when he lost possession to the respondent, I would not find it appropriate to issue an order of injunction in the terms sought by the applicant but would only grant the application to the extent of restraining the respondent from constructing or erecting any structures on the suit property pending the hearing and determination of the applicant's suit.

11. In accordance with Order 40 Rule 6 of the Civil Procedure Rules 2010 the interlocutory injunction shall lapse within 12 months from the date hereof if the suit is not heard and disposed of within that

period. The parties are therefore directed to comply with Order 3 Rule 2 and Order VII Rule 5 of the Civil Procedure Rules 2010 and finalize all the pre-trial procedures.

12. Those shall be the orders of this court.

**Dated and delivered this 18<sup>th</sup> day of February, 2011**

**H. M. OKWENGU**  
**JUDGE**

In the presence of: -

Advocate for the plaintiff/applicant absent

Bosire H/B for Muturi for the defendant/respondent

Kosgei - Court clerk