



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**LAND AND ENVIRONMENTAL LAW DIVISION**

**CIVIL SUIT (ELC) NO.317 OF 2010**

**STANLEY THIONGO NDUATI.....1<sup>ST</sup> PLAINTIFF**  
**LEONARD KIRORI KARIUKI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**JAMES WACHIRA HARISSON.....1<sup>ST</sup> DEFENDANT**  
**EMBAKASI RANCHING COMPANY LTD.....2<sup>ND</sup> DEFENDANT**  
**CHIEF LANDS REGISTRAR.....3<sup>RD</sup> DEFENDANT**  
**COMMISSIONER OF LANDS.....4<sup>TH</sup> DEFENDANT**  
**THE HON. THE ATTORNEY GENERAL.....5<sup>TH</sup> DEFENDANT**

**RULING**

1. Stanley Thiongo Nduati and Leonard Kirori Kariuki (hereinafter referred to as the applicants) have moved this court by way of a notice of motion seeking an order of temporary injunction restraining James Wachira Harrison and Embakasi Ranching Co. Ltd. (hereinafter referred to as 1<sup>st</sup> and 2<sup>nd</sup> respondents) respectively, from dealing with or in any way interfering with LR. No. Nairobi Block 105/5811 and LR. No. Nairobi Block 105/5812 (herein referred to as the suit properties) pending the hearing of a suit which they have filed against the respondents.
2. The applicants claim to be the proprietors of the suit properties having acquired them through an agreement of sale entered into with the late John Muigai Mugo a director and shareholder in a land purchase scheme administered by the 2<sup>nd</sup> respondent. The applicants are aggrieved by the 1<sup>st</sup> respondent who has trespassed into the suit properties claiming that the suit properties belong to him. The applicants allege that the 1<sup>st</sup> respondent has through illegal and irregular circumstance obtained ownership documents from the 2<sup>nd</sup> respondent claiming to have been allocated the said parcels by the 2<sup>nd</sup> respondent and is attempting to have the land registered in his name. The applicants therefore pray for the interlocutory orders sought as they are apprehensive that should the 1<sup>st</sup> respondent acquire a first registration of the suit property, the applicants' rights will be extinguished and they will thereby suffer irreparable loss.
3. The 1<sup>st</sup> respondent swore a replying affidavit in which he pointed out that the application dated 5<sup>th</sup> July 2010 was fatally defective, and that the application has no merit since the applicants have not established a prima facie case that they are the owners of the suit property, or that the late John Muigai

Mugo was ever a director of 2<sup>nd</sup> respondent or was allocated any shares in the 2<sup>nd</sup> respondents company or that the plots allegedly sold to the applicant were the ones allocated the official registration number after survey of the 2<sup>nd</sup> respondents land. The 1<sup>st</sup> respondent maintains that he paid all the required fees for 5 plots (including the suit properties) to the 2<sup>nd</sup> respondent, and that he received leases for the suit properties from the 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent therefore denies being a trespasser on the suit premises. The 1<sup>st</sup> respondent further contends that the applicant has come to court seeking equitable remedy with unclean hands and is undeserving of the orders sought.

4. James Karanja Mwangi a director of the 2<sup>nd</sup> respondent also swore a replying affidavit in which he explained that the 2<sup>nd</sup> respondent's board of directors together with the surveyors re-examined their records and found that the 2<sup>nd</sup> respondent had mistakenly allocated the suit properties to the 1<sup>st</sup> respondent and proceeded to execute a transfer of the forms in favour of the 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent's director swore that the examination of their records confirmed that the applicants bought the suit properties from John Muigai Mugo and that the transfer of the two shares was executed with the knowledge and consent of the 2<sup>nd</sup> respondent. It was therefore claimed that the confusion between the applicant and the 1<sup>st</sup> respondent regarding ownership of the suit properties was caused by a bona fide mistake.

5. In response to the affidavit sworn by the 2<sup>nd</sup> respondent's director, the 1<sup>st</sup> respondent swore a further replying affidavit reiterating the position that he bought 5 shares from the 2<sup>nd</sup> respondent and was allocated the suit properties by the 2<sup>nd</sup> respondent, and that the 2<sup>nd</sup> respondent was colluding with the applicant with the intention of denying 1<sup>st</sup> respondent ownership of the disputed plots.

6. I have carefully considered the application, the affidavit in support and in reply, as well as the submissions made by counsels. I find it evident that there is a dispute regarding the ownership of the suit properties. The applicants' contention that the suit properties belong to them has been supported by the 2<sup>nd</sup> respondent. I am satisfied that the 1<sup>st</sup> respondent has established a prima facie case with probability of success. Moreover the dispute involves land subject of a 1<sup>st</sup> registration, therefore unless the order sought are granted, the transfer and registration of the suit property may be effected and this would expose the applicants to irreparable loss.

7. Accordingly, it is fair and just that the suit properties which are the subject of the suit be preserved through an injunction order. I therefore grant the notice of motion dated 5<sup>th</sup> July 2010 and issue the order of interlocutory injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> respondents from dealing with or in any way interfering with the suit properties during the pendency of this suit.

8. In accordance with Order 40 Rule 6 of the Civil Procedure Rules 2010 this interlocutory injunction shall lapse 12 months from the date hereof. Parties are therefore directed to finalize the pre-trial procedures with a view to having the suit disposed of without undue delay.

9. Costs shall be in the cause.

**Dated and delivered this 11<sup>th</sup> day of February, 2011**

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

In the presence of: -  
Kimathi for the plaintiff  
Githaara H/B for Kamau for the defendant  
B. Kosgei - Court clerk