



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**LAND AND ENVIRONMENTAL LAW DIVISION**  
**CIVIL SUIT (ELC) NO.115 OF 2011**

**BERNARD MBALUKA NGULA.....PLAINTIFF/APPLICANT**

**VERSUS**

**ZUHURA NJERI KURAI.....1<sup>ST</sup> DEFENDANT/RESPONDENT**  
**MUGO NJERU.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. Bernard Mbaluka the plaintiff/applicant seeks orders restraining the defendants Zuhura Njeri Kuria and Mugo Njeru from trespassing, alienating, entering or in any way interfering with the plaintiff's property known as LR.No.209/1103 Villa-Franca Nairobi, (hereinafter referred to as the suit property), pending the hearing and determination of the plaintiff's suit.
2. The application is anchored on the fact that the applicant was allocated the suit property on 1<sup>st</sup> July 1998. He took possession of the suit property having paid the required premium. Whilst awaiting to be issued with the certificate of lease, the applicant erected permanent structures on the suit premises which he rented out. To date, the applicant has not been issued with the lease certificate. The applicant has now discovered from Lands Office, that a certificate of lease in respect of the suit property has been issued to the 1<sup>st</sup> defendant whose agents are threatening to demolish the applicant's developments which are on the suit property.
3. In response to the application the 1<sup>st</sup> defendant has exhibited documents showing that the Commissioner of Lands is in the process of preparing a grant in her favour. The 1<sup>st</sup> defendant has also exhibited receipts for payment of land rent and rates.
4. Having considered the application, the affidavits and the documents exhibited by both parties, I find that the 1<sup>st</sup> defendant has not exhibited any grant, but has only exhibited a letter showing that a grant is in the process of being prepared. The circumstances under which the grant is being issued to the 1<sup>st</sup> defendant is not clear. The applicant has also exhibited an allotment letter from the Commissioner of Lands, and a receipt for payment of land premium. It is evident that there is a dispute regarding the ownership of the suit property. This dispute can only be resolved after the plaintiff's suit is heard and fully determined. In the meantime since the applicant has been on the suit property for the last 12 years and has permanent developments on the suit property the applicant would suffer substantial loss if interim

orders are not granted to preserve the status quo.

5. I therefore find it fair and just that an interlocutory order of injunction do issue against the defendants as prayed in prayer (2) of the notice of motion dated 18<sup>th</sup> March, 2011. The order shall lapse within 12 months from today. The applicant must therefore take all necessary action to facilitate the finalization of the pre-trial procedures with a view to speedy prosecution of the suit.

6. Costs of the application shall be in the suit.

**Dated and delivered this 17<sup>th</sup> day of May, 2011**

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

In the presence of: -

MS Muteti for the plaintiff/applicant

Advocate for the defendant/respondent absent

B. Kosgei - Court clerk