



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL CASE NO. 162 OF 2009

DAVID MWANI WANJOHI:.....PLAINTIFF

=VERSUS=

PHILIP KOECH:.....DEFENDANT

R U L I N G

The Plaintiff, **David Mwangi Wanjohi**, has brought this Summons in Chambers under the provisions of Order XXXIX Rules 1, 2, 3 and 9 of the Civil Procedure Rules and all the enabling provisions of the Law. The principal order sought is that, pending the hearing and final determination of this suit, there be a temporary injunction against the defendant, his servants and/or agents from further interfering and/or trespassing and threatening the plaintiff and his servants and/or agents and/or workers from occupying and developing or constructing upon Land No. Uns. B. C. R. Plot No. G. situated within Nandi Hills Town (hereinafter “**the suit land**”).

The application which is supported by affidavits sworn on 25th September, 2009 by the plaintiff and **Peter K. Yego**, the previous owner of the said parcel, is based on the main grounds that the plaintiff is a bonafide purchaser of the suit land; that he is in the process of constructing a building thereon with the blessings of the previous owner; that the respondent has no colour of right over the suit land; that the construction material is in danger of being stolen and/or damaged by adverse weather conditions and that unless the order is sought, the plaintiff stands to suffer irreparably.

When the application came up for inter partes hearing before me on 11th May, 2011, the same proceeded ex-parte as there was no response to the same. The evidence contained in the supporting affidavits aforesaid reveals that the suit land is the property of the plaintiff who has commenced development thereon by constructing a store and a commercial building now at an advanced stage. The ownership of the suit land by the plaintiff is buttressed by the affidavit evidence of the previous owner. On the said evidence, I am satisfied that the plaintiff has established a case for a prohibitory injunction as sought. The said evidence is not in any event contradicted.

Accordingly, the application is allowed in terms of prayer 3 thereof. The order of injunction is granted on condition that the plaintiff shall file an undertaking as to damages within the next three (3) days.

Costs of the application shall be in the cause.

Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 29TH DAY OF JUNE, 2011.

**F. AZANGALALA
JUDGE.**

Read in the presence of:-

Mr. Kiboi for the applicant.

**F. AZANGALALA
JUDGE
29/6/2011**