



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

CIVIL CASE NO. 29 OF 2011

JOHNSTONE MATHENGE NJOKA NDIRITU.....PLAINTIFF/APPLICANT

VERSUS

JESEE THEURI NJOKA.....1ST DEFENDANT/RESPONDENT

THE HON. ATTORNEY GENERAL

ON BEHALF OF THE NYERI DISTRICT LAND REGISTRAR

MINISTRY OF LANDS.....2ND DEFENDANT/RESPONDENT

PRESBYTERIAN FOUNDATION.....3RD DEFENDANT/RESPONDENT

RULING

Johnstone Mathenge Njoka Ndiritu, the Plaintiff/Applicant herein, took out the Motion dated 21st March 2011 whereof he prayed for the following orders:

- 1. That this application be heard exparte on urgent basis in the 1st instance.***
- 2. That the status quo of Land titles L.R. Aguthi/Muruguru/1754 and 1755 be maintained until the hearing and disposal of the Originating summons herein.***
- 3. That the 1st and 3rd defendant be restrained from evicting the Plaintiff from the suit property herein until hearing and determination of the Originating summons herein.***
- 4. That 1st and 3rd defendants be restrained from disposing, leasing, selling, transferring and in any other manner interfering with the plaintiffs occupation of the suit premises nor to harass and to instigate criminal prosecution against the plaintiff until the hearing and determination of the originating summons herein.***

The Motion is supported by the affidavit of the applicant. **Jessee Theuri Njoka, the Attorney General**

and **Presbyterian Foundation**, were named as the 1st, 2nd and 3rd Defendants/Respondents. The Respondents opposed the application by filing the affidavits of Jesse Theuri Njoka, Patrick Kiara Ndiritu and Wilson Wahome Kiboi.

I have considered the oral submissions of learned counsels from both sides and the material placed for this court. The substantive matter in this dispute is expressed in the originating summons dated 21st March 2011 in which the Plaintiff prays to be declared to have acquired **L.R. NOS. AGUTHI/MURUGURU/1754** and **1755** by adverse possession. He now wants this court to issue the orders sought to maintain the *status quo* pending the hearing and determination of the Originating Summons. It is the Plaintiff's submission that he will be able to show at the trial of the suit that he has been in continuous occupation of the aforesaid land since 1996. The Plaintiff avers that in 2009, the 1st Defendant purported to sell the land in dispute despite the fact that there was a caution registered against title. He further claimed that the 1st Defendant surreptitiously caused the original land known as **L.R. NO. AGUTHI/MURUGURU/1300** to be subdivided into **L.R. NOS. AGUTHI/MURUGURU/1754** and **1755**. The aforesaid parcels were allegedly transferred to the 3rd and 1st Defendants respectively. The Plaintiff stated that he was served with a demand notice in January 2011 requiring him to vacate the land in question hence he was prompted to file this suit.

On their part, the Defendants are of the view that the Motion should be dismissed. The 1st Defendant gave the history of the land in dispute. It is said that the land was originally known as **L.R. NO. AGUTHI/MURUGURU/322** and registered in the name of Njoka Munga. The same was subdivided into two portions i.e. **L.R. NO. AGUTHI/MURUGURU/848** and **849**. It is said that the Plaintiff's father was given **L.R. NO. AGUTHI/MURUGURU/849** which **L.R. NO. AGUTHI/MURUGURU/848** was given to the 1st Defendant and his brother. In 1993, the 1st Defendant averred that they subdivided **L.R. AGUTHI/MURUGURU/838** into two portions namely **L.R. NO. AGUTHI/MURUGURU/1300** and 1301. In 2009, the 1st Defendant is said to have subdivided **L.R. NO. AGUTHI/MURUGURU/1300** into two portions i.e. **L.R. NO. AGUTHI/MURUGURU/1754** and **1755** and sold the former to the 3rd Defendant. The 1st Defendant admitted that at some stage the Plaintiff had indicated he wanted to purchase the land in dispute from him. He claimed the deal collapsed hence he received no payments as alleged by the Plaintiff. The 3rd Defendant claimed it bought the land with no encumbrances. The 3rd Defendant admitted there are a few trees growing on the land in dispute.

It is trite law that an applicant who seeks for injunctive orders must show he has a prima facie case with a probability of success. In the dispute before me, it is apparent that the Applicant has shown a prima facie case. It is tersely admitted that the Plaintiff had lodged a caution against title and that there are a few trees which grow on the land in dispute. It is also admitted that the Plaintiff had at some stage expressed his intention to purchase the land. It is not denied that the Plaintiff had been served with a notice of eviction. I am, on my part, satisfied that it is possible the Plaintiff has been in peaceful and continuous occupation of the land in dispute for a period of over twelve (12) years. If the order of injunction is not given then the Plaintiff may suffer substantial loss in that the vital evidence required to prove his case will have been destroyed. He may also be seriously inconvenienced in that he will have been evicted.

For the above reasons, I allow the Motion as prayed.

Dated and delivered at Nyeri this 21st day of October 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Kingori holding brief Muguku for the Applicant Wachira for the 1st and 3rd respondents. No appearance for the 2nd Respondent.

