



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Appeal 4 of 2009

JOHN KAHWI KABUCHO.....APPELLANT

VERSUS

ZAKARY MURIRI MURAYA.....1ST RESPONDENT

GRACE WANJIRU MURIRI.....2ND RESPONDENT

RULING

The appellant is the plaintiff in Nyahururu PMCC No. 176 of 2008. His application for a temporary injunction to restrain the respondents who are the defendants in that case from continuing with construction on the disputed piece of land being Unsurveyed Plot No.A Nyahururu Municipality (the suit piece of land) was dismissed provoking this appeal. Pending the hearing and determination of the appeal he has made a similar application to this court. His case is that he was allocated the suit piece of land by the Commissioner of Lands on 27th July 1999. In 2008 he found the respondents building on it and moved to court to restrain them but his application for injunction was dismissed.

The respondents' version of the story is that the suit piece of land was sold to them by the Municipal Council of Nyahururu on 21st June 1999.

This appears to be a case of double allocation. The appellant has exhibited a letter of allotment from the Commissioner of Lands allocating the suit piece of land to him. The respondents have also exhibited a copy of the agreement between them and the Municipal Council of Nyahururu showing that the suit piece of land was sold to them by the Council. The main issue in the case therefore is which authority owned the suit piece of land before allocation; was it the Government or the Municipal Council of Nyahururu?

If the respondents are allowed to continue with their construction on the suit piece of land and the issue is eventually determined in favour of the appellant that would deprive him of the suit piece of land. In the circumstances justice demands that the status quo be maintained until this appeal is heard and determined. Consequently I allow this

application and order that pending the hearing and determination of this appeal both parties are hereby restrained from occupying, carrying on or continuing with any construction on the suit piece of land. The costs of this application shall abide the outcome of the appeal.

DATED and delivered this 28th day of January 2010.

D. K. MARAGA
JUDGE.