

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Civil Case 291 of 2009

PATROBA J. SIMATWO.....PLAINTIFF
VERSUS
PILSTA AUMA SIMBA.....DEFENDANT

RULING

The applicant, has simultaneously with the plaint, brought the instant chamber summons in which he seeks, in the main, an order of temporary injunction to restrain the respondent from constructing structures on, disposing of, alienating or transferring parcels of land NO. NAKURU MUNICIPALITY BLOCK 14/713 (the suit property) pending the hearing and determination of this suit. It is the applicant's case that he is the registered owner of the suit property; that the respondent, without any right or authority has unlawfully fenced off the suit property by constructing a wall thereby denying the applicant access and use of the suit property; that the Town Clerk has addressed a letter to the respondent withdrawing authority to construct a wall pending the resolution of the dispute over the ownership of the plot; that the applicant's advocates also wrote to the respondent's lawyer advising them that the fence is being erected on the applicant's land; and that the respondent has ignored both letters.

The application was served on the respondent, who failed to respond to it or attend when it came up for hearing. It is not in dispute that there is an adjacent plot to the suit property. That plot is No.NAKURU MUNICIPALITY BLOCK 14/713, which is alleged to belong to the respondent. The applicant has presented *prima facie* evidence that he is the registered proprietor of the leasehold in the suit property. A copy of Certificate of Lease in respect of the suit property in favour of the applicant has been annexed to the application. It shows that the Certificate of Lease was issued to the applicant on 3rd September, 2009. The applicant also presented a *prima facie* case that he has paid land rents upto 31st December, 2009. Without evidence in rebuttal, I am satisfied that there is a *prima facie* case with a probability of success.

Being a land dispute and in view of the acts complained of, the applicant stands to suffer injury which cannot be adequately compensated by an award of damages as he will be cut off from his land. The balance of convenience dictates that the construction of a fence be shelved until the dispute is determined.

For these reasons, there will be a temporary order of injunction in terms of prayer 3 of the chamber summons dated 13th October, 2009 pending the hearing and determination of this suit.

Costs of this application is awarded to the applicant.

Dated, Signed and delivered at Nakuru this 15th day of January, 2010.

W. OUKO
JUDGE