

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU
Civil Suit 117 of 2008

PATRICK NJOROGE & ANOTHER

T/A WEB SUPPORT SYSTEMS.....PLAINTIFF

VERSUS

PETER K. MWANGI.....DEFENDANT

RULING

This is an application for injunction brought under **Order 39 Rules 1 & 3** of the **Civil Procedure Rules** to restrain the defendant by himself, his servants and/or agents from entering or in any way interfering with the plaintiff's pieces of land known as Title No. **Kiambogo/Kiambogo Block 2/8246-8262** (formerly known as **Title No. Kiambogo/Kiambogo Block 2/105**) (the suit pieces of land) until the hearing and determination of this suit. The application is based on the affidavit of the 1st plaintiff in which he claims that the plaintiffs are the owners of the suit pieces of land having bought the original piece of land known as **Title No. Kiambogo Kiambogo Block 2/105** of which the suit pieces of land are subdivisions from M/S Gilani Supermarket Ltd in 1998. He further claims that in June 2008 the defendant went to the suit pieces of land with a surveyor purportedly to re-survey the same to enforce some tribunal decision the plaintiffs know nothing about. That prompted the filing of this suit and application.

In his defence and replying affidavit, the defendant states that he is not claiming the ownership of the suit pieces of land. All he wants is to have it re-surveyed to restore the original boundary which had been shifted causing the plaintiffs to encroach on his piece of land.

At the hearing of the application on 18th November 2009 neither the defendant nor his counsel appeared to oppose it. Miss Mburu for the applicants relied on the affidavit in support of the application and urged me to grant it as prayed.

As stated the defendant is not claiming ownership of any of the suit pieces of land. Armed with the Nakuru District Land Registrar's decision of 6th March 2003, all he wants is to have them re-surveyed and the boundary restored to its original position. That decision relates to a boundary dispute between Title No. **Kiambogo/Kiambogo Block 2/97, 952 & 953**. It is not clear how the suit pieces of land or the original piece of land of which they are subdivisions came to be involved. In the circumstances, and in view of the fact that this application is not contested, I allow it and order that an injunction be and is hereby issued to restrain the defendant by himself, his servants and/or agents from entering or in any way interfering with the suit pieces of land until this suit is heard and determined.

DATED and delivered this 24th day of November, 2009.

D. K. MARAGA

JUDGE.