



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 477 of 2007**

**DANIEL NZIOKA MAKAU ..... PLAINTIFF**

**VERSUS**

**1. SYOKIMAU FARM LIMITED**

**2. NDUTA NDUNGU..... DEFENDANTS**

**RULING**

The Plaintiff herein claims the ownership of Plot No.20 registered as Land Reference No.12715/178 and any alienation thereof to any other party by the 1<sup>st</sup> Defendant be declared to be null and void. The plaintiff also avers the fraud on the part of the 1<sup>st</sup> Defendant who was the Original Land Buying Company and the Plaintiff being its member, and the particulars of such fraud is enumerated in the plaintiff also.

The Plaintiff has along with the plaintiff, filed a Chamber Summons under Order XXXIX Rules 1 and 9 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. It seeks to restrain the 2<sup>nd</sup> Defendant from cultivation of the suit land, constructing or continuing to build any houses thereon and from alienating the same pending hearing and determination of the suit. It also seeks costs of the application. The application is supported on the grounds mentioned thereon and on the affidavit in support sworn on 19<sup>th</sup> July, 2007 and supplementary affidavit sworn on 26<sup>th</sup> September, 2007 by the Plaintiff.

The Plaintiff has shown that he became a member of the 1<sup>st</sup> Defendant company and was given letter of allotment offering Plot No.20 in L.R. No.7149/11/R. it was dated 17<sup>th</sup> October, 1983. He has failed to show that he has paid Shs.1,500/- and/or fulfilled other conditions mentioned in the said letter (Ann. DNN 2 to the affidavit in support). The receipt of Shs.500 (Ann. DNN 3) mentions payment to show plot No.247, which he alleges as a mistake. It was meant for Plot No.20. He has not mentioned in his affidavit in support that he has lodged a complaint against Edward Mbugua Kamau although he did mention his name and further stated that he did not know him. It is only when the said fact was mentioned in the replying affidavit, he tried to explain the incident by stating that it was the police who summoned him, after he reported the matter of his inability to find records of his land at the lands office. (Paragraph 12 of the supplementary affidavit).

The averments in his affidavit that plot No.20 is the suit land i.e. 12175/178 are supported only by his statements that the officers at the 1<sup>st</sup> Defendant's office told him so without mentioning their names or positions held. I do not have anything on record to satisfy me that plot No.20 is the land in question. On the other hand I have the replying affidavit which shows the title deeds in the names of the 2<sup>nd</sup> Defendant and her late husband, in respect of LR.Nos.12715/1859, 12175/1860, 12175/1861, 12175/1862, 12175/1863 and 12175/1864 which were sub-divided from the original plot 12715/178/5. The replying affidavit gives the history of the said leases, which are not denied by the plaintiff except to say that the signature on the note is not his. The statement dated 17<sup>th</sup> October, 2005 made by the wife of the named

Edward Mbugua to the police also mentions the same facts as those averred by the 2<sup>nd</sup> Defendant.

The crucial point before me is that the Plaintiff himself has stated that there is no record of any title deed in his name. The letter of allotment relied upon by the Plaintiff is in the year 1983 and I am not shown the fulfillment of the conditions as regards payment etc which he has accepted on 19<sup>th</sup> November, 1984 almost after lapse of one year after the letter of allotment. The next document shown by him is a receipt dated 11<sup>th</sup> April, 2002 to be shown Plot No.247.

On the other hand the 2<sup>nd</sup> Defendant has shown prima facie that she holds the Title Deeds of various plots and no allegation of fraud is made against her.

To state in brief, what is before me cannot be sufficient to enable me grant the order of injunction prayed by the Plaintiff. In my considered view, the Plaintiff has not shown prima facie case with probability of success and/or balance of convenience. He has not even demonstrated that he shall suffer damages which cannot be compensated with damages, as he himself has not followed the acquisition of his allotted land from 1984 upto 2002.

In the premises aforesaid, I dismiss the application with costs.

Dated and signed at Nairobi this 8<sup>th</sup> day of February, 2008.

**K.H. RAWAL**

**JUDGE**

**8.2.08**