



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

Election Civil Suit 110 of 2008

1. Land and Environmental Law Division

2. Subject of main suit land

LR7752/226

LR7752/227

a) wrongful occupation

b) Destruction of boundary and beacon.

3. Application 14 March 2008

a) Injunction restraining defendant from entering or remaining on land.

4. Held

b) Injunction not to issue.

5. Case law – Nil

6. Advocate

F.N. Wamalwa of F.N. Wamalwa & Co. Advocates for the plaintiff/exparte/applicant – present

Defendants unrepresented - absent

SAMUEL GITHAIGA 1ST PLAINTIFF

IBRAHIM KINYUA NGANGA 2ND PLAINTIFF

VERSUS

NJERU M. NYAGA 1ST DEFENDANT

NYAGA KIVUTI PATRICK 2ND DEFENDANT

RULING

APPLICATION 14 MARCH 2008

INJUNCTION

1 PROCEDURE

1. Plaintiff 1 and 2 sued defendant 1 and 2 for an injunction on grounds that the two defendants Njeru M. Nyaga & Nyaga Kivuti Patrick had trespassed upon their property and destroyed their gate fence and beacon.

2. The two plaintiff filed a certificate of urgency whereby they also filed an application for injunction.

3. On 20 March 2008 they appeared before Wendoh J during the court vacation and were granted orders of status quo to be maintained. By now the two plaintiffs were able to use the police to stop further trespass. Though status quo "has not been disclosed by the judge, it is presumed the two defendants are not on the land.

4. On the 7 April 2008 an inter-parties hearing was to be heard. The said hearing came before this court but the defendants on being served were absent. I proceeded to hear the inter parties hearing under Order IXB r 3 (a) Civil Procedure Rules.

II: Application

5. The applications state that the respondents came and destroyed the boundary and beacon. On filing this suit there has been no challenge at all by the defendants. They pray that an injunction being granted.

III: Opinion

6. There is annexed a title deed and extract of the records on the certificate of title. On the face of title 7752/226 registered in the name of Peter Nganga Muiruri, the same was transferred to Ibrahim Kinyua Nganga the 2nd plaintiff herein. There is a change to Housing Finance Company of Kenya and thereafter eight years latter there is a transfer to Nyagah Kivuitu Patrick the 2nd defendant herein.

7. I therefore note that the said parcel of land title 7752/226 no longer belong to 2nd plaintiff. I do not see the title on my file for LR 7752/227 for the 1st plaintiff but I presume the situation must be the same. The two plaintiffs are no longer title owners of the suit premises.

8. The two defendants on the other hand are not entitled to evict the plaintiff without a lawful court order. They must file suit for eviction after the sale (if any) by a mortgage to them as buyers.

9. To this extend I would rule that no injunction should issue against the defendants provided that they have lawful court orders from the High Court of Kenya to evict the plaintiff on grounds of the property having been sold to them. The application for injunction refused

10. There will be no orders as to costs.

DATED THIS 8TH DAY OF APRIL 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

F.N. Wamalwa of F.N. Wamalwa & Co. Advocates for the plaintiff/exparte/applicant – present

Defendants unrepresented - absent