



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

Civil Case 1183 OF 2005

HENRY NYABUTO NYAMDAKI APPLICANT

VERSUS

KENYUCO HOUSEING CO-OPERATIVE

SOCIETY LTD RESPONDENT

RULING

I: APPLICATION DATED 20.11.06 SEEKING INJUNCTION ORDERS RESTRAINING DEFENDANT FROM INTERFERING WITH SUIT PROPERTY.

1. Back ground of application

1. The defendants are a land buying company under the cooperative society. The plaintiff brought and sub-divided parcel of land from one of their members being Kajiado/Kaputiei-North 3794 that was about 0.10 ha or 100 by 100 feet in size.

2. New officials were elected and on going to the ground discovered most beacons were not there. They commenced a new survey for the area of 0.07 ha per member or 80 by 60 feet in size.

3. The plaintiff objected to this stating suit division was finalized and the title papers were in effect out already.

4. The defendants regardless proceeded to sub-divide through their surveyors. They claimed that the plaintiffs had fraudulently acquired his own surveyor and obtained a bigger portion.

5. The plaintiff filed this suit in 2006 and prayed that permanent injunction do issue for the plaintiff against the defendant to restrain them from actually conducting the surveyor afresh.

II: Application 20.11.2007 Procedure

6. On the day the case was called out the advocate for defendant No.1 stated he was before the criminal bench conducting a murder trial before that court.

7. The parties agreed by consent to hear this application from 4 October 2007 to 16 October 2007 on that said day of 16 October 2007 the advocate for defendant failed to attend court. The rules permits this

court to proceed on under order IXb r 3(a) Civil Procedure Rules and in his absence.

III Finding

8. The said applicant informed the court through his advocate that if the sub-division is to be taken up again he will suffer irreparable loss.

9. In this matter I find that a prima facie case has been made out against the respondent/defendant. The reasons being that once the Ministry of Land has made records concerning title it is only the court or the Registrar of Land who may in effect cancel the said title and or modify it. It seems that the defendant/respondent may require to obtain such orders prior to their exercise. If per chance they did obtain such authority, due process and natural justice requires that the said be communicated to the plaintiff accordingly.

10. I hereby give the orders of injunction with costs to the plaintiff applicant.

Dated this 17 day of October 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

M.N. Oonge of M.N. OOnge & Co. Advocates for the plaintiff/applicant – present

J.K. Mbaluka for Mbaluka & Co. Advocates for the defendant/respondent – absent

during main application, present at reading of ruling only