



Miira v Embakasi Ranching Company Limited & 2 others (Environment and Land Miscellaneous Application E113 of 2023) [2023] KEELC 18790 (KLR) (12 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18790 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E113 OF 2023**

**LN MBUGUA, J
JULY 12, 2023**

BETWEEN

JULIUS WAINAINA MIIRA PLAINTIFF

AND

EMBAKASI RANCHING COMPANY LIMITED 1ST DEFENDANT

THE CHIEF LAND REGISTRAR NAIROBI 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. Before me is the Plaintiff's Notice of Motion dated March 29, 2023 which is for determination. He seeks a temporary injunction pending hearing and determination of the instant application restraining the Defendants whether by themselves, their agents, servants, employees or otherwise from entering upon, occupying, encroaching, alienating, sub dividing and /or entering into purported contracts for the sale or lease, license, charge or other dealings including construction or other developments in a manner inconsistent with the Plaintiff's non-member certificates of plot ownership or remaining on 92 plots situated at Ruai Area in Nairobi. The plots in question have been itemised in the application.
2. The application is based on the grounds on its face and on the Plaintiff's supporting affidavit sworn on March 28, 2023. He avers that on or about August 21, 2012, he was contracted by the 1st Defendant through his construction company known as Miira Building and Civil Engineering Contractor Limited to erect and complete the construction of a boundary wall together with other facilities at the 1st Defendant's offices.
3. He avers that it was agreed pursuant to the said building contract that in consideration of his undertaking of the said works, the 1st Defendant would allocate and transfer to him 200 plots in their Embakasi Ranching Company Limited measuring 100 ft each in place of the agreed construction sum of ksh 21.6 million.



4. He avers that he proceeded to diligently and industriously complete the work and the Defendant proceed to allocate him a total of 92 plots and remained with a balance of 108 plots which he has not been allocated to date.
5. He avers that he is apprehensive that the Defendants may at any time now purport to encroach and subdivide the 92 plots, and that already 3rd parties with the permission of the 1st Defendant are purporting to try and enter the suit plots without his consent and with the intent of subdividing, selling, charging, alienating, leasing and/or purporting to enter into contracts for sale or lease of the 92 parcels of land situate in Ruai.
6. The Defendants did not file responses despite being served.
7. Unfortunately, perhaps through a mistake/error the Plaintiff sought a temporary injunction pending hearing and determination of the instant application. That would mean that the prayers sought are spent.
8. However, even if the prayers were sought pending the hearing of the suit, the application would still fall by the way side in view of the fact that the applicant has not met the criteria for issuance of injunctive orders as set out in the case of *Giella v Cassman Brown Co Ltd* [1973] EA 358 and reinforced by the Court of Appeal case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* (2014) eKLR. The Applicant has no title to the suit properties, he doesn't appear to be in occupation of the same and he has not demonstrated that he stands to suffer irreparable damage which cannot be adequately compensated with an award of damages. If anything, the applicant has sought for compensation in one of his main prayers in the suit.
9. All in all, I find that the application dated March 29, 2023 is not merited, the same is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF JULY 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Mr. Momanyi holding brief for Mr. Njau for Plaintiff/Applicant

Court Assistant: Eddel

