



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 10 OF 2020

ALEXANDER MIANO NDIGA.....PLAINTIFF/APPLICANT

VERSUS

MARTIN NDAMBIRI MIANO.....1<sup>ST</sup> DEFENDANT/RESPONDENT

MATTHEW NDATHI MIANO.....2<sup>ND</sup> DEFENDANT/RESPONDENT

NJIRANO KINYUA MIANO.....3<sup>RD</sup> DEFENDANT/RESPONDENT

RULING

1. By a Notice of Motion dated 02<sup>nd</sup> November 2020 and supported by an affidavit of even date, the Plaintiff herein approached the court seeking the following orders:

i. Spent;

ii. That the court be pleased to issue an order of status quo to all the Respondents to maintain peace;

iii. That the court be pleased to issue an order for resurvey of all the boundaries of Parcel No. KABARE/NJIKU/3342, 3343, 3344, 3345, 3346 and 3347;

iv. That the court be pleased to issue an order to the OCS to give security during the resurvey exercise and the same order be served upon Kirinyaga County Land Registrar since the Defendants has removed the beacon;

v. That the court be pleased to issue an order to the Defendants to move and occupy the respective parcels of land shown to them by the Plaintiff;

vi. That the court be pleased to issue an order restraining the Defendants from interfering with land parcel nos. KABARE/NJIKU/3345, 3346 and 3347 and to remove all their property and houses therefrom within 30 days;

vii. That the court be pleased to issue an order enforcing the Defendants to take possession of their land, that is, the 1<sup>st</sup> Defendant to take parcel KABARE/NJIKU/3342; the 2<sup>nd</sup> Defendant KABARE/NJIKU/3343 and the 3<sup>rd</sup> Defendant KABARE/NJIKU/3344 within 30 days and for all the Defendants to accompany the Plaintiff to the Land Control Board meeting;

viii. Costs of the application.

2. The Plaintiff's prayers are grounded on the following considerations:

a. That he is the father of the three Defendants;

b That he has given them parcels of land as follows: the 1<sup>st</sup> Defendant, KABARE/NJIKU/3342; the 2<sup>nd</sup> Defendant, KABARE/NJIKU/3343 and the 3<sup>rd</sup> Defendant KABARE/NJIKU/3344;

c. That the Defendants have refused to take possession of their respective parcels;

d. That the Defendants create disturbance to the Plaintiff at night when drunk;

e. That the Plaintiff is at risk of being beaten by the Defendants.

3. The 2<sup>nd</sup> Defendant, with instructions from the other two Defendants filed his reply in opposition to the application on 18<sup>th</sup> February 2021. He confirms that the Defendants are children of the Plaintiff and that they have no differences between them. That the Defendants are shocked to learn that the Plaintiff intends to give them parcels of land and have no objection whatsoever. That there has been no discussion whatsoever between the Plaintiff and the Defendants regarding the subdivision of land and the plan to give them the parcels. That the Defendants currently reside on the land but carry out cultivation elsewhere. It is their opinion therefore that the suit ought to be dismissed with costs to the Defendants.

4. The court has considered the notice of motion application and the Defendant's joint response.

5. From the onset, some of the orders sought cannot be granted by this court. On the first prayer, an order for the maintenance of peace can only be issued in criminal proceedings pursuant to **Section 43 of the Criminal Procedure Code, Cap 75**. On the 5<sup>th</sup> prayer, the court cannot give an order forcing persons to take possession of a parcel of land given to them as an inheritance/gift. In addition, in relation to the Defendant's alleged drunken and unruly behavior as well as the Plaintiff's fear of their assaulting him, the Plaintiff ought to seek police intervention or to institute criminal proceedings.

6. Other prayers made by the Plaintiff cannot be granted at this interlocutory stage and must wait to be canvassed fully at trial. These include the orders of resurvey sought, ostensibly on the grounds that the beacons have been removed by the Defendants, a fact that they deny. That said, it appears that the Plaintiff is ready and willing to bequeath three land parcels to the Defendants and the Defendants from the affidavit appear ready and willing to accept the parcels.

7. The status quo orders sought are in the courts opinion, inconsequential since they would only maintain the situation as is, which situation is undesirable to the Plaintiff. See **Republic Vs National Environment Tribunal, ex-parte Palm Homes Limited & Another [2013] e KLR, Odunga J. stated,**

**"When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario..."**

8. The upshot of the foregoing analysis is that the application lacks merit and must be dismissed. Each party to bear its own costs.

**RULING READ, DELIVERED PHYSICALLY AND SIGNED IN OPEN COURT AT KERUGOYA THIS 21<sup>ST</sup> DAY OF MAY, 2021**

.....

**E.C. CHERONO**

**ELC JUDGE**

In the presence of:

1. Plaintiff – present

2. 1<sup>st</sup> Defendant – present

3. 2<sup>nd</sup> Defendant – present

4. 3<sup>rd</sup> Defendant – present

5. Kabuta – Court clerk.