



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 235 OF 2017**

**JOSEPH NYAKUNDI ORINA.....PLAINTIFF**

**VERSUS**

**JOSEPH AMBUKA.....DEFENDANT**

**RULING**

***(Application for injunction; plaintiff having purchased the suit property but defendant being in it; defendant now embarking on construction; no reply filed by the defendant; defendant ordered to stop any further construction; order that status quo be maintained until the case is finalized)***

1. This suit was commenced by way of a plaint which was filed on 6 June 2017. In his plaint, the plaintiff has pleaded that he is the owner of the land parcel Nakuru Municipality Block 13 L (Bondeni) (Unsurveyed) which land he purchased from one Miriam Wairimu Gichuki on 10 February 2014 at a consideration of Kshs. 500,000/=. The plaintiff has averred that the defendant has now invaded the land and trespassed into it and has commenced putting up structures without the consent of the plaintiff. In his suit, the plaintiff has sought orders of eviction; permanent injunction; mesne profits and costs.

2. Together with the plaint, the plaintiff filed an application for injunction seeking to have the defendant restrained from invading, cultivating or in any other way interfere with the plaintiff's possession of the suit land until this case is heard and determined. It is that application which is the subject of this ruling.

3. Despite being served, the defendant has not filed any appearance and has not responded to the application for injunction. The only material that I have is therefore that supplied by the plaintiff.

4. In his supporting affidavit, the plaintiff has annexed a copy of the sale agreement that he had with Miriam Wairimu Gichuki. He has stated that he has tried to reason with the defendant to no avail and that the defendant has ignored attending any of the meetings called by the County Government of Nakuru in an attempt to resolve the matter. He has averred that the defendant has now started constructing on the land and putting up rental houses and has refused to vacate the land.

5. I have considered the application. As I mentioned earlier, there is no response filed by the defendant. The plaintiff has displayed his agreement with the alleged former owner of the suit property which is not disputed by the defendant. The plaintiff has also annexed several letters written by the County Government of Nakuru calling the defendant to a meeting to resolve the dispute over the land. The plaintiff has of course stated that the defendant has ignored attending these meetings. I have no reason to doubt the plaintiff since the defendant has not controverted any of his claims.

6. I note however that the defendant appears to have been on the land and if I issue an order of injunction barring him from the said land, I will technically be evicting him from the land without first hearing the case. I think in the circumstances of the case before me, it is best that I issue an order of status quo which ought to be maintained until the case is heard and determined. It was said that the defendant is now making structures on the land. This must stop and there must be no further construction on the land until the case is heard and determined. The user and possession of the land should be as it is currently until this case is finalized. I see no prejudice to the plaintiff since he has a claim for mesne profits in his plaint and he can be ably compensated for any loss that he will incur for not using the land for the duration of this suit.

7. I therefore make the following orders :-

**(i) That the defendant and/or his servants/agents and/or assigns, is hereby ordered to stop any construction and not to embark on any further construction and/or developments in the land Nakuru Municipality Block 13 L/Bondeni (unsurveyed) until this case is heard and determined.**

**(ii) That the defendant is hereby stopped from offering for sale, selling, charging, or in any other way adversely deal with the land Nakuru Municipality Block 13 L/Bonden (unsurveyed) until this case is heard and determined.**

**(iii) That the current status quo as to the user and possession of the land to be maintained until this case is heard and determined.**

**(iv) That costs of the application will be costs in the cause.**

8. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 1<sup>st</sup> day of November 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Ms. Kamau for the plaintiff/applicant

No appearance for defendant/respondent

Court Assistant: Carlton Toroitich

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT AT NAKURU**