



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO.26 OF 2017**

**PERIDIAN LIMITED.....PLAINTIFF**

**VERSUS**

**DMITRY GWANDHO.....DEFENDANT**

**RULING**

***(Application for injunction; principles to be applied; plaintiff holding a leasehold title to the land; defendant allegedly interfering with the plaintiff's possession; no response filed by defendant; prima facie, the plaintiff demonstrating ownership of the land in dispute; application for injunction allowed)***

1. This suit was commenced by way of plaint filed on 2 February 2017. In his plaint, the plaintiff, a limited liability company, has pleaded that on 6 January 2017, it purchased the land parcel Nakuru Municipality Block 12/252 from the previous owner, one Peter Lee Nyamasyo Kiilu. The plaintiff then took possession through its directors and placed workers to renovate the site. It is pleaded that the defendant came into the property, accompanied by a gang of youth and defaced the entrance gate with graffiti, solely with intention to annoy, harass and interfere with the plaintiff's quiet possession. It is pleaded that the defendant is a bully, who has no colour of right to trespass into the plaintiff's property. In the suit, the plaintiff has sought orders inter alia that the defendant be permanently restrained from the suit land; general damages for trespass and costs of the suit.

2. Together with the plaint, the plaintiff filed an application for injunction against the defendant, which is the subject of this ruling. Despite being duly served with summons and the application, the defendant has not entered appearance to the suit and has filed nothing to oppose the motion. The only material that I have is therefore that presented by the plaintiff.

3. The supporting affidavit to the motion has been sworn by Daniel Macua Ndonga, a director of the plaintiff company. He has more or less repeated the averments in the plaint and has annexed copies of the Certificate of Lease and search of the property, showing that it is the plaintiff company which holds title to the suit land.

4. I have considered the application. I have seen that the plaintiff appears to hold a leasehold title to the suit land. I have no reason to doubt that the plaintiff is truly the registered proprietor of the suit land. Under Section 26 of the Land Registration Act, 2012 the certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor, shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate.

5. As I mentioned earlier, the defendant has not filed anything to demonstrate that he has any rights over the suit land.

6. I am of the view that the plaintiff has established a prima facie case and if the injunction is not issued, the defendant may continue with his acts of interference and cause irreparable loss to the plaintiff. I therefore allow this application for injunction, and I order that pending the hearing and determination of this suit, the defendant be restrained from attempting to take possession, enter, be upon, or interfere with the gates, fences or other material situated in the land in suit land, or in any other way interfere with the quiet possession of the plaintiff in the land parcel Nakuru Municipality Block 12/252.

7. The plaintiff shall also have the costs of this application.

8. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 9<sup>th</sup> day of March 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of: -**

Mr. L.M. Karanja holding brief for Mr. Matiri for the plaintiff/applicant

Court Assistant : Nelima

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**