



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT COURT OF KENYA**

**AT NAKURU**

**ELC NO. 36 OF 2014**

**DANSON G KARANJA KIMANI .....PLAINTIFF**

**VERSUS**

**FRANCIS MACHARIA MIHURO .....1<sup>ST</sup> DEFENDANT**

**SAMUEL MAINA.....2<sup>ND</sup> DEFENDANT**

**RULING**

This suit was commenced on 12 February 2014 by way of plaint. The case of the plaintiff as pleaded is that he has been a shareholder of Kihoto Farmers Company from the year 1983 and by virtue thereof, he was allocated two shares, being plots No. 403 and 470. It is his case that the defendants have entered his land and have built their houses therein instead of developing on the plot No. 482, which according to the plaintiff, belongs to their aunt. In good faith, on 5 July 2010, the plaintiff and the 1st defendant agreed to call a surveyor to point out the boundaries. This was duly done and the plaintiff offered to assist the 1st defendant move his house to his rightful portion in the land parcel 482. It is stated that one Gerald, however convinced the defendants not to move out of the plaintiff's land until a court order is obtained. In the suit, the plaintiff has asked that the defendants be evicted and for an order of permanent injunction.

Together with the plaint, the plaintiff filed an application seeking the following principal order:-

*That pending the hearing and determination of this suit, there be an injunction restraining the defendants, their relatives, servants or agents from going against the survey findings agreed upon on 5/7/2013.*

The grounds upon which the order is sought include the reasons that a survey was conducted and boundaries established; that the defendants agreed to move out of the plaintiff's land; and that the defendants have refused to move out after being incited. The application is supported by the affidavit of the plaintiff. He has more or less repeated the averments in the plaint that a survey was done, and the defendants promised to move out, which they have not done so.

The defendants so far have not filed any appearance and have not replied to the subject application.

I have considered the application.

The plaintiff wants the defendants restrained from going against certain survey findings agreed by them on 5 July 2013. However, I have no report of the surveyor, and I cannot tell what it contained. What is

annexed to the supporting affidavit is a letter from the Assistant Chief dated 5/7/2013, stating that a survey was conducted on 4/7/2013, and that the surveyor placed beacons on the land, and that the parties have agreed to abide by the findings of the surveyor. I think it was imperative for the plaintiff to annex a copy of the survey report so that I can be sure that the defendants are actually on the plaintiff's land and also know the extent of that encroachment. It is important in matters such as these, for an expert's report to be tabled, for it is that report, which clearly demonstrates the encroachment and the extent thereof. I find it difficult to issue an order directing the defendants to follow a surveyor's decision which I myself have not seen.

Given the above, I regret that I am unable to allow the application. I dismiss it but make no order as to costs. Instead, I direct the plaintiff to set down the suit for hearing so that the issue of encroachment can be determined with finality. I trust that the plaintiff will be minded to table a report by an expert showing the encroachment that is complained of.

Orders accordingly.

**Dated signed and delivered in open court at Nakuru this 5th day of February 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**In the presence of :-**

Ms Alwala holding brief for Ms Nancy Njoroge for plaintiff/applicant

Defendants have not entered appearance: absent

Emmanuel Maelo : Court Assistant

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**