



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ELC NO. 1071 OF 2014**

**JULIUS GITONGA NJOROGE.....PLAINTIFF**

**VERSUS**

**EMBAKASI RANCHING CO. LTD.....1<sup>ST</sup> DEFENDANT**

**SAMUEL NJOGU KIMITA.....2<sup>ND</sup> DEFENDANT**

**RULING**

Coming up for determination is the Plaintiff's application dated **7<sup>th</sup> August 2014**. The Plaintiff prays for an order of injunction to restrain the 2<sup>nd</sup> Defendant from entering, evicting, constructing, selling and or transferring or in any other way interfering with the Plaintiff's ownership of **Plot No. 1393 Share Certificate No. 14227**, pending the hearing and determination of the suit. The application is premised on grounds that the Plaintiff is the owner of the suit plot and has been in possession since 2006. However, that the 2<sup>nd</sup> Defendant has constructed a wall which has denied the Plaintiff access to the plot.

The application is supported by an affidavit sworn by the Plaintiff wherein he deposed that in 1992, the 1<sup>st</sup> Defendant advertised in the newspaper that it was selling shares and that the shareholders would be allocated plots. Based on the advertisement, the 1<sup>st</sup> Plaintiff paid Kshs. 24,000/- for the purchase of a plot together with stamp duty, transfer and survey fees and was issued with **Share Certificate No. 14227 on 9<sup>th</sup> September 1992** and allocated **Plot No. 1393**. It was his deposition that the 2<sup>nd</sup> Defendant action of constructing a wall on his property amounted to trespass and a contravention of his right to ownership thereof.

The application was opposed by the **2<sup>nd</sup> Defendant**, who swore a Replying Affidavit on **1<sup>st</sup> September 2014**. He deposed that he was a stranger to the Plaintiff's averments since they refer to **Plot No. 1393 Share Certificate No. 14227** whereas his owns **Plots No. 3654 and 3655** under **Share Certificate No. 52070**. The 2<sup>nd</sup> Defendant deposed that he paid **Kshs. 70,000/-** for the two whereafter the 1<sup>st</sup> Defendant showed him the plots and he constructed the perimeter wall thereon. He reiterated that he had no claim whatsoever on **Plot No. 1393**, belonging to the Plaintiff and thus denied the allegation of trespass, deposing that he was the lawful owner of **Plots 3654 and 3655**.

The application was canvassed by way of written submissions which I have carefully read. The dispute between the parties is in respect to the physical location of their plots as they each claim to be owners of

different plots. Clearly, the confusion is on the ground. The Defendant's counsel submitted that it would be prudent for the Court to order that there be an independent report either from the 1<sup>st</sup> Defendant or a Government Surveyor which would resolve the issue. I agree with this submission because the report will assist the Court to make a proper finding as to the ownership of the plot in dispute. Evidently, therefore, this dispute cannot be adjudicated over at this stage devoid of a hearing and a report indicating the actual locations of the said plots. Both parties have shown their interests over the properties and it would be in the interest of justice that status quo be maintained.

Having now considered the pleadings in general and the submissions, the Court finds it prudent to order that **Status Quo** be maintained in the following terms:-

The orders of the court are as follows:

- 1. An order of Status quo is hereby entered to the effect that no party shall enter, construct, dispose off or in any manner alienate the disputed plot pending the hearing and determination of the suit or further orders of this court.**
- 2. A Surveyor from the Department of Surveys of Kenya, in conjunction with the 1<sup>st</sup> Defendant do undertake a survey exercise to establish the physical locations of the plots in issue. Thereafter, a report be filed within 60 days of the date hereof. Both Plaintiff and 2<sup>nd</sup> Defendant shall meet the Surveyor's fees equally.**
- 3. Costs of the application shall be in the cause.**

It is so ordered.

Dated, Signed and Delivered this **5th** day of **June, 2015**

**L. GACHERU**

**JUDGE**

In the Presence of:-

M/s Muthoni holding brief Okido for the Plaintiff/Applicant

None attendance for the 1<sup>st</sup> Defendant/Respondent

Mr Kimathi for the 2<sup>nd</sup> Defendant/Respondent

Hilda : Court Clerk

**L.GACHERU**

**JUDGE**

**Court:**

The matter to be mentioned on 22<sup>nd</sup> September 2015 to confirm if the surveyor's Report has been filed.

**L GACHERU**

**JUDGE**

5/6/2015