



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 640 of 2012

PETER MIRING'U KAGWI.....PLAINTIFF

VERSUS

EMBAKASI RANCHING COMPANY LIMITEDDEFENDANT

RULING

Before me is a Notice of Motion dated 27/9/12 filed by the plaintiff Peter Miring'u Kagwi hereinafter referred to as the applicant against the defendant Embakasi Ranching Company limited hereinafter referred to as the respondent.

The application is brought under section 1A, 3A and 63(e) of the Civil procedure Act, Chapter 21 of the laws of Kenya, order 40 Rules 1& 4 Order 51 rule 1 of the Civil procedure rules and all other enabling provisions of the law.

It seeks the following orders;

1. Spent
2. That pending the hearing and determination of this application and suit a temporary injunction do issue restraining the defendant, its agents, servants or any other persons whether acting on their own or on the defendant's behalf from alienating, transferring, developing or howsoever dealing with the following plots comprised in land reference number 10904/2 situate in Ruai off Komorock.
 - a) Plots numbers L 115 and L 116(survey plan map for Mungania 1 Block 105)
 - b) Plot Number L115 B (Block 136/2162)
 - c) Plot Number L 116 B(Block 136/2143)
 - d) Plot number H263 (survey plan map for Mungania 1 Block 105)
 - e) Pot number H 263B (Block 136/2161)
3. That the defendant do deliver to the plaintiff at its expense vacant possession of the following plots comprised in land reference number 10904/2 situate in Ruai off Komarock Road:
 - a) Plots numbers L115 and L116 (survey plan map for Mungania 1Block 105).

- b) Plot Number L115 B(Block 136/2162)
- c) Plot Number L116 (Block 136/2143)
- d) Plot Number H 263 (survey plan map for Mungania 1 Block 105)
- e) Plot number H 263B (Block 136/2161)

4).That an order do issue compelling the defendant to release to the plaintiff title deeds in respect of the following plot comprised in land reference number 10904/2 situate in Ruai off Komarock road.

(a)Plots numbers L115 and L116 (survey plan map for Mungania 1 Block 105)

(b) Plot Number L115B (Block 136/2162)

(c)Plot Number L116 B(Block 136/2143)

(d) Plot Number H 263 (survey plan ma for Mungania 1 Block 105)

(e) plot Number H 263 (Block 136/2161)

4. That the costs of this application be borne by the defendant.

The application is grounded on the following grounds;

a) The plaintiff and his deceased wife, Jane Wambui Miring'u are the legal owners of the above named plots having been allocated the same by the defendant by virtue of their shareholding in the defendant.

b) The plaintiff and his deceased wife met all the conditions for issuance of titles deeds in respect of the aforementioned plots by paying to the defendant all the requisite fees to cater for survey fees, issuance of title deeds, installation of beacons, civil engineering fees to cater for installation of water, access roads, riparian, sewer drainage way leaves and subdivisions.

c) The defendant has to date refused, failed and/or neglected to release to the plaintiff the title deeds in respect of the plots.

d) The plaintiff has recently discovered that here has been encroachment upon the following suit plots in the following manner:

Plot Number	Nature of Encroachment
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i. Plot no. L115- it has been cultivated

ii. Plot No. L 116 – a Mabati structure and a stone walled toilet has been constructed thereon.

iii.Plot No. L.115 B – It has been fenced round with barbed wire and cultivated.

iv.Plot No. L116B – a greenhouse has been erected thereon

v. Plot No. H 263 B- a Mabati structure and semi permanent structure has been erected on the plot with a hoisted tank at the top

e) The defendant has refused, failed and/or neglected to deliver vacant possession of the plots to the plaintiff and his deceased wife and/or intervene to stop and prevent the encroachment of the suit plots by third parties.

- f) That the identities and whereabouts of the trespassers and/or grabbers are not known to the applicants and have therefore been impleaded in this matter.
- g) The defendant has refused, failed and/or neglected to confirm to the plaintiff that the plots allotted to the plaintiff and his deceased wife are properly entered in their records and are properly demarcated in the company's surveys maps and that the defendant has not allotted any other persons (s) the suit plots.
- h) The plaintiff requires the title deeds to the plots to enable him develop the suit plots or deal with them in any manner beneficial to him.
- i) If the orders sought are not granted the plaintiff and his deceased wife will suffer irreparable loss as the encroachment on the said plots may continue beyond recall.

The application is supported by the affidavit of the applicant.

The respondent was served but did not respond to the application. In the applicant's affidavit he depones that the defendant is the registered proprietor of L.R No. 10904/2 off Komorock Road measuring approximately 2,024 hectares. He was invited to buy shares in the company and he bought 2 shares and was issued with a share certificate No. 2303 dated 1/8/78. He also bought one share for his wife Jane Wambui Miring'u (now deceased) to hold in trust for him and was issued with a share certificate No. 3439 dated 1/8/78 (PMK 1A & B). That on the 28/11/92 by virtue of his shareholding in the defendant's company he was issued with a provisional letter of allocation in respect of plot numbers L115 and L116 out of the company's land, his late wife was issued with a provisional letter of allocation in respect of plot no. H263 out of the said land (PMK3A & B). On the 11/11/91 he paid the company Kshs 10500/0 for the 2 plots (PMK). On the 21/7/93 the defendant allotted to him upon payment of interalia membership registration and survey fees 2 bonus plots namely plot No. L115B (Block 136/2162) and L116 B (Block 136/2143) on the same land.

They were not bordering the original plots. On the same day his late wife was also allocated a bonus plot no. H263 -B (Block 136/2161) on the same land. They made all the requisite payments to the defendant company as stipulated in the letters of allocation. Plots no. H263 and H263 B were held by his deceased wife in trust for his benefit and therefore he has the locus standi to lay claim to the said plots. On the 12/4/07 the defendant issued him with a written permit to develop plot No. L115. That despite making all the payments to the company, it has to date failed, neglected and refused to issue him and his deceased wife title deeds in respect of the suit plots. That in May 2012 he visited the plots and discovered that plot No. L115 had been cultivated, plot No. L116 had a mabati structure and a stone walled toilet constructed on it. Plot No. L115B (Block 136/2162) had a barbed wire fence round it. That plot no. L116 B (Block 136/2143) had a green house erected on it, plot No. H263 had been cultivated and plot No. H263 B (Block 136/1261) had a mabati structure and semi permanent structure erected on the plot with a hoisted tank on top. He went to the company's offices to inquire but its officials ejected him from the office. From there he lodged a complaint at Ruai Police Station, the police have not helped him either. He does not know identities and whereabouts of the trespassers and or grabbers. His lawyers too wrote to the defendant to confirm that the suit plots were allotted to him but there has been no response. The applicant states that he now requires the title deeds to the plots to enable him develop them and that if the orders sought are not granted he will suffer irreparable loss as the encroachment of the said plots could continue beyond recall.

The averments in the plaintiff /applicant affidavit were not controverted by the defendant. The plaintiff has to establish a prima facie case with a probability of success, that he will suffer irreparable loss if the injunction sought is not granted and if the Court is in doubt then the Court will decide the case on balance of convenience (**Geilla Vs. Cassman Brown LTD. E.A 1973**)

The plaintiff has attached all documents that show that the defendant company allotted him the plots the subject of his application and suit. This has not challenged by the defendant company. He has established a prima facie case. I note that there are no titles issued yet for these plots. Being a shareholder and or allottee of the said plots the subject of this application and suit the plaintiff has shown that he has a legal

and beneficial interest in the said plots. It is evident that he could lose all the plots he bought together with those of his late wife. The balance of convenience tilts in favour of the applicant. The applicant deserves the injunction order to preserve the status of the suit plots. However I note that prayers no. 3 and 4 are mandatory orders. A mandatory order can only be granted in the clearest of cases. The applicant states that the said plots seem to have occupied by other parties who are not parties in this suit. I therefore decline to grant the said orders at this interlocutory stage.

I grant prayers No. 2 that pending the hearing and determination of the suit a temporary injunction shall issue restraining the defendant, its agents, servants or any other persons whether acting on their own or on the defendants behalf from alienating, transferring developing or dealing with plots comprised in L.R 10904/2 situate in Ruai off Komorock road namely plot No. L115 and L116 (survey 136/2162), plot No. L116B (Block 136/2143) plot No. H 263 (survey plan Map for Mungania 1 Block 105) and plot No. H263B (Block 136/2161. The defendant shall bear costs of the application.

Dated, signed and delivered this 6th Day of March 2013

R. Ougo

Judge

Orders accordingly.

.....**PLAINTIFF/APPLICANT**

.....**1ST DEFENDANT/RESPONDENT**

.....**2ND DEFENDANT/RESPONDENT**

.....**COURT CLERK**