



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NAKURU**

Civil Case 326 of 2011

**ELIJAH NGUNJIRI MWENENIA.....PLAINTIFF**

**VERSUS**

**KIRICHU NDEGWA.....DEFENDANT**

**RULING**

By the Notice of Motion dated 10/11/2011, the plaintiff/applicant, Elijah Ngunjiri Mwenenia, seeks an order of injunction to restrain the defendant/respondent, Kirichu Ndegwa whether by himself, his servants or agents, from felling down trees, developing or in any way interfering with land parcel No. Laikipia/Salama Mukuru Block 1/828 and prays that the OCS Ndaragwa Police Station Do oversee the enforcement of the order. The applicant holds a power of attorney donated to him by the registered owners of the subject suit land and has the power to file this suit. The applicant exhibited the power of attorney (ENM1) and a copy of the title deed registered in the names of Tabitha Wangechi Murigu, Mary Wangui Murigu, John Gitahi Murigu, Ann Wangui Murigu and Charles Gichuki Murigu (ENM2). The applicant alleges that on 25/9/2011, the respondent entered the suit land and started to fell down trees for burning charcoal without the applicant's consent. He exhibited photographs of the suit land. This is despite the fact that the boundaries are clearly demarcated. Despite protestation from the applicant, even through his lawyers (ENM5), the respondent has persisted in the trespass yet he has no legal claim to the said land. In the further affidavit dated 19/12/2011, the applicant deponed that the owners of the land purchased the land from Mukuru Farmers Co. Ltd in form of three shares which was equivalent to 11.34 Ha as per the share certificate (ENM.5). He denied that the Tribunal made any decision on the ownership of the land and that in any event, the Judicial Review application that was filed by the respondent was dismissed on a technicality.

The respondent opposed the application. He swore a replying affidavit dated 30/11/2011 in which he denies having trespassed onto the applicant's land, but that he is in lawful occupation of LR Laikipia/Salama Muruku Block 1/193 which borders the plaintiff's land as evidenced by the Survey Map (ENM4); That he has been in occupation of that land since 1978 and that the applicant hived off about 9 acres of his land and he lodged a dispute with Laikipia Land District, Rumuriti Division in Land Case 71/2006. The dispute was heard and the Tribunal directed that the title be rectified (KM1). The award was adopted in Nyahururu Principal Magistrate's Court Land Case No. 35/05 (KM2); that the plaintiff rushed to court when the surveyor was about to execute the said decision and filed JR 77/2010 in which he

sought to quash the award and decree (KM3) but the application was dismissed on 24/6/2011 (KM4). When the District Land Surveyor and officer were preparing to visit the suit land, the applicant again rushed to this court to stop it. He denied having any intention to cut trees from his parcel of land; that the applicant's fears are unfounded and therefore the plaintiff has failed to demonstrate that he has a prima face case.

Having considered the affidavits filed in this matter and submissions made by counsel, it is evident that there has been a long standing dispute over the suit land. The applicant's land Laikipia/Salama Muruku Block 1/828 and the respondent's land, Block 1/193 border each other. There was a dispute over the boundary in claim No. 71/2006 before the Laikipia West District Rumuruti Divisional Land Disputes Tribunal in which an award was made in favour of the respondent, was adopted as an order of the court on 18/8/09 in Principal Magistrate's Court Nyahururu. The Tribunal found that the disputed land was agricultural land; that part of the respondent's land was in the applicant's plot and the Tribunal directed the surveyor to resurvey the two plots and alter the titles accordingly. This is the award that the respondent claims that whenever the respondent wants to enforce, the applicant rushes to court to forestal it. Though the applicant tried to challenge the said orders through Judicial Review, 77/2010, the same was dismissed on technicality. The award of the Tribunal therefore still stands.

The Land Disputes Tribunal in its decision dated 24/7/08, found that Kirichu Ndegwa, the defendant owns Plot Laikipia/Salama Muruku Block 1/193 made of four shares which is approximately 36 acres and that the plaintiff owns Plot 1/828 made of two shares and approximately 18 acres, but that on the ground, Agnes' land is about 11.34 Ha while that of Ndegwa is 12.55 Ha meaning that part of the defendant's land is the applicant's plot.

As per the title deed exhibited by the applicant, his land measures 11.34 Ha while the title issued to the respondent shows that his land measures 12.955 Ha. It is evident that there is a portion of land registered under the applicant that is in dispute and that being the case the court would need to determine who owns it. It is not a matter of mere trespass. Even if the matter had proceeded to full hearing in the Judicial Review application, 77/2010, the issue of ownership would not have been determined. It would still need to be considered as a civil suit where evidence can be tendered to establish what each party is entitled to from Muruku Land Company and what each got from the Muruku Company Ltd, whether the titles reflect the correct acreage in each party's respective shareholding. I find therefore that the applicant has demonstrated that there is a real dispute on ownership of part of the parcel 1/828 which is registered in the applicants' names.

I have seen the photographs exhibited by the applicant. They do not show that there is any destruction of trees for burning charcoal or any kind of destruction. There is no evidence that damage will be done to the land but it is evident that the respondent wants part of the said land transferred to him whereas the issue of ownership is not yet settled. I find that the balance of probability tilts in favour of the applicant that I grant the order of injunction to preserve the status quo till the matter is heard and determined. It means that Plot Laikipia/Salama Mukuru should not be interfered with in any way till this suit is heard and determined. Costs to be in the cause.

**DATED and DELIVERED this 9<sup>th</sup> day of July 2012.**

**R.P.V. WENDOH**

**JUDGE**

**PRESENT:**

Miss Omwenyo holding brief for Mr. Kibelion for the applicant

N/A for the respondent  
Kennedy – Court Clerk