



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**Civil Case 86 of 2009**

**STEPHEN MAINA AND 6 OTHERS.....PLAINTIFF**

**VERSUS**

**PAUL MIRIGI & ANOTHER.....DEFENDANTS**

**RULING**

The plaintiffs claim in their plaint that although they bought their pieces of land from the first defendant and have title deeds for them, the second defendant has fenced off some of them and denied them access to those pieces of land. In the application dated 19<sup>th</sup> March, 2009, they seek an injunction to restrain the defendants from entering, fencing, building or in any other way dealing with their parcels of land.

The first defendant has not opposed the application but the second defendant has. He claims that in the course of subdividing his land the first defendant encroached onto his land and all he has done is to fence off his land. He has exhibited to the replying affidavit a letter from a surveyor apparently engaged by the first defendant admitting the encroachment during the subdivision and informing the District Land Registrar of that error and stating the corrective action is being taken. In the circumstances I cannot see how an injunction can issue to restrain the second defendant from utilizing his land as he pleases. In my view, the plaintiffs had better pursue the first defendant, who has indicated he is ready and willing to have the resurvey done so that he can give to each of them the land each bought from him, to complete the resurvey and give them their dues instead of wasting time with applications that will not take the anywhere.

For these reasons I dismiss this application with costs to the second defendant.

**DATED and delivered this 5<sup>th</sup> day of October, 2009.**

**D.K. MARAGA**

**JUDGE.**