



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC CASE NO.249 OF 2018**

**PHILIP WAMBUA MUNGUTI.....1<sup>ST</sup> PLAINTIFF**

**JOYCE MUNGUTI.....2<sup>ND</sup> PLAINTIFF**

**=VERSUS=**

**ELIZAPHAN NJOROGE KIURU.....1<sup>ST</sup> DEFENDANT**

**NAIROBI COUNTY GOVERNMENT.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaintiffs/Applicants filed a Notice of Motion dated 28<sup>th</sup> May 2018, in which they sought the following orders.

**1. Spent**

**2. Spent**

**3. That the 1<sup>st</sup> defendant/respondent be and are hereby restrained by himself, his employees ,agents, servants and/or any other person whomsoever deriving authority from him from entering or in any way howsoever trespassing or interfering with the plaintiff/applicants ownership and possession of the suit property being plot No.3/184SOWETO EX-MUOROTO pending the hearing and determination of this suit.**

**4. The O.C.S Kayole police station to ensure compliance with the above orders and that peace prevails.**

**5. Any other relief that the Honourable Court may deem just to grant.**

**6. That the cost of this application be in cause.**

2. The applicants are joint owners of plot No.3/184 which was allotted to them on 20<sup>th</sup> September 1990.The allocation was made by the then provincial administration but it is clear that the applicants are paying rates to the Nairobi City Council who may have regularized the allocation. The applicants contend that upon allocation of plot 3/184 (suit property) they took possession and constructed a permanent house on it and enclosed it with a perimeter fence.

3. The applicants later re-located to their rural home. The first respondent took advantage of their absence and invaded the suit property, demolished the permanent structure and fence and started putting up his own structures. The applicants complained about the invasion to the local administration and the Nairobi City County which is the second respondent. The second respondent visited the suit property and confirmed that the disputed plot was the suit property. The first respondent has since refused to cease interfering with the suit property. It is on this basis that the applicants are seeking the orders in the application.

4. The first respondent has opposed the applicant's application through a replying affidavit sworn on 8<sup>th</sup> August 2018. The first respondent states that he has nothing to do with the suit property as he has his own land which is plot 3/183. In the alternative, he claims that his property that is plot 3/183 was adjacent to the suit property. In 2007 a road was constructed through the suit property herein. The area Assistant County Commissioner unilaterally decreed that the adjacent plot was No.3/184 the suit property. The first respondent contends that there is a scheme to disposes him of his property.

5. I have considered the applicants' application as well as the opposition to the same by the first respondent. I have also considered the oral submissions by the advocates for the applicants and the respondent. The only issue for determination is whether the applicants have demonstrated that they have met the threshold for grant of an injunction. There is no doubt that the applicants were allocated the suit property. The applicants have been paying rates to the second respondent. When a dispute arose as to the ownership of the suit property, the officials of the second respondent went to the ground and made a finding that the disputed plot was the suit property. The applicants and the first respondent were present.

6. The first respondent has annexed a map to his replying affidavit which shows that the suit property and plot 3/183 which he claims are adjacent. The first respondent's claim that it is the area Assistant County Commissioner who decreed that the disputed plot is the suit property has no basis. The Nairobi City County who are the custodians of documents relating to plots within their jurisdiction have confirmed that the suit property is the subject of the dispute between the applicants and the first respondent. I therefore find that the applicants have demonstrated that they have a prima facie case. If the first respondent has his own plot, he should be contended with it and stop interfering with the suit property. I therefore allow the notice of motion dated 28<sup>th</sup> May 2018 in terms of prayers three (3), Four (4) and six (6).

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 31<sup>st</sup> day of January 2019.**

**E.O.OBAGA**

**JUDGE**

In the presence of;-

Mr Nadida for Mr Owaga for Applicant

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**