

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI LAW COURTS

ELC SUIT NO. 963 OF 2015[OS]

JAMES MBURU.....PLAINTIFF

VERSUS

JAMS MWANGI WAINAINA & ANOTHER.....DEFENDANTS

RULING

1. This is a ruling in respect of a notice of motion dated 26th February 2018. The application is brought by the second defendant and it seeks an order of injunction restraining the plaintiff from constructing houses on LR No 13754 Karen in Nairobi (suit property). The second defendant/ applicant contends that he is the registered owner of the suit property but that the Plaintiff/Respondent invaded the same and has been constructing houses on the same claiming adverse possession.

2. The Plaintiff/Respondent has opposed the application through a replying affidavit sworn on 30th April 2018. The respondent contends that the application by the applicant lacks merit; that there are injunctive orders in force against the applicant which have never been reviewed and that the application cannot be granted in the circumstances.

3. I have considered the applicant's application as well as the opposition to the same by the Plaintiff/Respondent. I have also considered the submissions by the applicant and the second respondent. The only issue for determination is whether an injunction can be granted in favour of the applicant as prayed.

4. The Plaintiff/Respondent had filed a suit against the second defendant /applicant and another person in which he sought adverse claim in respect of the suit property. He contemporaneously filed an application for injunction seeking to restrain the Defendants/ Respondents from interfering with his possession of the suit property. The injunctive orders were granted as prayed on 16th December 2015 as there was no opposition to the same. The orders were given to last until the suit is heard and determined.

5. As at the time the injunctive orders were granted in favour of the Plaintiff/Respondent, the respondent was in possession of the suit property and had already constructed houses where he was living. These orders have never been reviewed or varied. The applicant cannot therefore seek orders of injunction seeking to retrain what has already occurred. The applicant's application for injunction has no basis. What the applicant seeks to achieve in case the application is granted is to evict the Plaintiff/Respondent before the claim for adverse possession is heard. I find no merit in the application which is dismissed with costs to the plaintiff/respondent.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this 17th