

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 4 OF 2019

ELIJAH SEKAH.....PLAINTIFF

VERSUS

EMBAKASI RANCHING COMPANY LIMITED.....DEFENDANT

RULING

The Plaintiff filed several applications seeking injunctive relief. At the time of arguing the application, the Plaintiff's advocate withdrew the applications dated 5/2/2019 and 25/2/2019 and stated that he would proceed to urge the application dated 15/1/2019. He explained that the filing of the other two applications was necessitated by the threat of eviction the Plaintiff faced at the time. In the application dated 15/1/2018, the Plaintiff seeks a temporary injunction to restrain the Defendant, its agents, servants, workmen or any other person claiming interest through it from trespassing, entering, remaining, constructing, alienating, working on or dealing with land reference number Ruai Block 105 comprising L.R. No. 10904/4 and L.R. No. 10904/2 pending hearing and determination of the suit.

The application is made on the grounds that the Plaintiff is the secretary of Ex-Ranching Employees Self Help Group which is the legal and *bona fide* owner of L.R. No. 10904/4 situated within Nairobi having been allotted the land by the City Council of Nairobi through a letter of allotment and having paid the requisite fees. The Ex-Ranching Employees Self Help Group is said to be composed of former Employees of Juja Sisal Limited, the original holder of the allotment letter from the City Council of Nairobi. The Plaintiff claims that by a letter dated 22/9/2003, the City Council of Nairobi extended the offer of allotment to the Ex-Ranching Employees Self Help Group which accepted the offer. He claims that Ex-Ranching Employees Self Group has been in occupation on the suit land for over 30 years. The Plaintiff claims that the Defendant registered a transfer on Ruai L.R. No. 10904/5 in 1987. The Plaintiff further claims that the Defendant through its employees and agents, made attempts to illegally and forcefully evict the Plaintiff and other members of the Self Group from the Suit Property which amounts to gross infringement of their legal rights as enshrined in law. The Plaintiff is apprehensive that unless the Defendant is stopped by the court, it will proceed to illegally evict him and the other members of the Self Help Group from the suit land and may proceed to sell, transfer, disposal or otherwise alienate the suit land to unsuspecting members of the public.

The application is supported by the Plaintiff's affidavit sworn on 15/1/2019 where he depones that he brought this suit on behalf of members of the Ex-Ranching Employees Self Help Group whose authorisation and consent he had obtained. He exhibited a list of members of the Ex-ranching employees Self Help Group and a consent addressed to the Registrar of the High Court of Kenya giving the group's consent for the Plaintiff to bring this suit. The court notes that the Plaintiff did neither filed this suit as a representative of the Self Help Group nor did he file it in the name of the officials of the Self Help Group. He filed it alone as the Group's secretary. The certificate of registration exhibited shows that Ex-Ranching Employees Self Group was registered on 25/5/2012. He attached minutes for Juja Farm Employees meeting dated 11/2/2012. The Plaintiff annexed a copy of the letter of allotment issued by the City Council of Nairobi to Ex-Ranching Employees Self Group dated 22/9/2003 approving allocation of L.R. No. 10904/4 to the Group on condition that they accepted the offer and paid the sum of Kshs. 1,826,800/= within 30 days of the offer. The receipt presented by the Plaintiff showed that the group paid Kshs. 50,000/= on 5/12/2018.

The photographs and copy of title annexed to the affidavit are illegible and the court is unable to infer from the documents whether the suit land was allocated to the Plaintiff or to members of the Self Help Group. The Plaintiff annexed copies of letters written to various government agencies such as the Commission on Administrative Justice, The Nairobi City County, the Independent Policing Oversight Authority, the Office of the Director of Public Prosecutions and the Inspector of Police regarding the threats to the members of the Self Help Group. The court notes that the response from the Nairobi City County dated 16/2/2018 notified the chairman of the Ex – Ranching Employee Self Help Group that matters to do with land titling and winding up of Embakasi Ranching Company were being handled by the National Government. It is not clear if the Group has pursued this avenue to resolve the dispute.

The issue for determination is whether the Plaintiff has made out the case for the grant of the injunctive orders he seeks. It has not been shown that the Defendant has threatened to evict the Defendant from the suit land. It is also not clear which parcel of land the Plaintiff claims whether it is L.R. No. 10904/4, L.R. No. 10904/2 or L.R. No. 10904/5 over which the Plaintiff avers that the Defendant registered a transfer in 1987.

The Plaintiff has failed to establish a prima facie case against the Defendant. The application dated 15/1/2019 is dismissed.

Dated and delivered at Nairobi this 1st day of April 2019.

K. BOR

JUDGE

In the presence of: -

Mr. L. Ochieng holding brief for Mr. Omondi for the Plaintiff

Mr. V. Owuor- Court Assistant

No appearance for the Defendant