

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO.271 OF 2019

SAMWEL KAMAITHA MURIUKI ALIAS SAMUEL KAMAITHA MURIUKI....PLAINTIFF

VERSUS

KIAMBU DANDORA FARMERS LIMITED.....1ST DEFENDANT

REGISTRAR OF TITLES.....2ND DEFENDANT

RULING

Through the application dated 21/08/2019, the Plaintiff seeks a temporary injunction to restrain the Defendants, their servants, workmen and agents from entering the Plaintiff's property known as land reference number 12633 ("the Suit Property") or transferring, disposing of, alienating, wasting or erecting or causing to be erected any constructions on it, or in manner interfering with the Plaintiff's use and enjoyment of the Suit Property pending hearing and determination of the suit. He also sought an order directed at the Officer, Commanding the Dandora police station to ensure compliance with the restraining order as well as the costs of the application.

The application was based on grounds that the Plaintiff is the registered proprietor of the suit land and that the 1st Defendant has continually interfered with the Plaintiff's enjoyment of the property by issuing threats to the Plaintiff that it would demolish the Plaintiff's developments. The Plaintiff was apprehensive that the Defendant may demolish his property.

The application was supported by facts set out in the Plaintiff's affidavit sworn on 02/08/2019. He deponed that he is the registered proprietor of L.R Number 12633, having bought the land from Solatec Limited. He annexed a copy of the title deed to the suit property. He further averred that on or about the year 2017, the 1st Defendant started issuing threats to him, with the most recent ones being issued in August, directed to his security guards and owners of neighboring parcels of land threatening to demolish and forcefully evict him and his neighbors from the respective properties they occupy. He averred that in March 2019, the 1st Defendant made good his threats by entering into the Plaintiff's neighbour's property and demolishing all the structures therein and the perimeter wall and that this has caused him a lot of anxiety. He annexed photographs of his neighbour's demolished and added that he would suffer irreparable loss and damage should the Defendant enter his land. He deponed that he receives and honours all rates demands from the County Government of Nairobi.

The issue for determination is whether on the facts pleaded the Plaintiff deserves the relief sought. Order 40 Rule 1 of the Civil Procedure Rules provides that the court may grant a temporary injunction to restrain such acts, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or the deposition of the property as the court thinks fit until the disposal of the suit or until further orders.

Based on the material placed before the court, his court is satisfied that the Plaintiff has a prima facie case against the Defendant. The Plaintiff is the registered owner of the suit property, based on the lease he holds over the suit property. The Plaintiff filed a valuation report which showed that the suit land had running businesses which could not be quantified, various developments and a lease to Safaricom Limited. The residue leasehold title interest is said to be worth Kshs. 130, 000,000/=. The Plaintiff stands to suffer damage that cannot be quantified and stands to lose the businesses being carried out on the suit land were the Defendant to demolish the Plaintiff's structures. The 1st Defendant did not enter appearance or file a response to the Plaintiff's application.

The court allows the application dated 21/08/2019.

Dated and delivered at Nairobi this 23rd day of October 2019

K.BOR

JUDGE

In the presence of: -

Mr. Kenga Nyale holding brief for Ms. Njoroge for the Plaintiff

Mr. V. Owuor- Court Assistant

No appearance for the Defendant