



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 147 OF 2018**

**VIRGINIA KATHAMBI MAINGI .....PLAINTIFF**

**VERSUS**

**NICHOLAS MWATIKA MULEI.....1<sup>ST</sup> DEFENDANT**

**CO-OPERATIVE BANK OF KENYA LTD.....2<sup>ND</sup> DEFENDANT**

**COMMISSIONER OF LANDS.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. In the Notice of Motion dated 9<sup>th</sup> April, 2019, the Plaintiff is seeking for the following orders:

***a. That status quo ante, the filing of this Application, be maintained pending the hearing and determination of the suit.***

***b. That the costs of this Application be provided for.***

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that he is the registered proprietor of land known as L.R. No. 337/935, Mavoko Municipality; that on 1<sup>st</sup> April, 2019, the 1<sup>st</sup> Defendant embarked on constructing a permanent wall on the suit property and that the said 1<sup>st</sup> Defendant intends to steal a match from him.

3. The Plaintiff finally averred that in the absence of conservatory orders, he stands to suffer irreparable harm and that the Defendants' act of fencing the suit property is geared at alienating the suit property.

4. In response, the 1<sup>st</sup> Defendant's Attorney deponed that he received a letter from the OCS Athi River, instructing him to fence the suit property because it had become a security concern in the area; that the land is adjacent to the Mavoko Chief's office; that the Plaintiff hired goons who destroyed the perimeter fence and that an Application for injunction filed by the Plaintiff was dismissed by the court on 2<sup>nd</sup> My, 2014. The 1<sup>st</sup> Defendant's Attorney finally deponed that the fence was erected way back in November, 2015 and that the Application should be dismissed.

5. Both the Plaintiff and the 1<sup>st</sup> Defendant's advocate filed submissions which I have considered.

6. This suit was filed by the Plaintiff in Nairobi in the year 2013. The Plaintiff filed a Notice of Motion dated 5<sup>th</sup> February, 2013 seeking for temporary injunction restraining the Defendants from trespassing, disposing off or in any other manner interfering with parcel of land known as L.R. No. 337/935 located in Mavoko. Upon hearing the Application, the court dismissed the Application.

7. Having filed the Notice of Motion dated 5<sup>th</sup> February, 2013, the Plaintiff cannot now file an Application whose effect is to restrain the 1<sup>st</sup> Defendant from dealing with the suit property in any manner he deems fit. The grant of an order of status quo will amount to an injunction, which has since been determined by this court.

8. In view of the Ruling of the court dated 2<sup>nd</sup> May, 2014, I am unable to grant the prayers sought in the Notice of Motion dated 9<sup>th</sup> April, 2019. The Application is therefore dismissed with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 8<sup>TH</sup> DAY OF NOVEMBER, 2019.**

**O.A. ANGOTE**

**JUDGE**