

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 99 OF 2016

SAMUEL KIPKOECH TOO.....PLAINTIFF

VERSUS

DAVID KIRUI.....1ST DEFENDANT

NANDI COUNTY GOVERNMENT.....2ND DEFENDANT

MINISTRY OF LANDS & URBAN

DEVELOPMENT, NANDI COUNTY.....3RD DEFENDANT

NATIONAL LAND COMMISSION.....4TH DEFENDANT

RULING

Samuel Kipkoech Too, (hereinafter referred to as the plaintiff) has come to court claiming to be the *bonafide* owner of **L. R. No. Lugari/Likuyani/Vihiga Block 1/234**, measuring about 1.216 Ha having obtained good title to the property for value without Notice of any fraud on the 31.1.2001. The plaintiff claims that he was allocated the parcel of land vide a letter of allotment dated 28.6.1999. He accepted the allotment and paid a stand premium of Kshs. 13,050. In order to take vacant possession, the plaintiff alerted the Nandi County Government to write to the National Land Commission to prepare leases for the unsurveyed industrial plots inclusive of the suit plot. A letter by the Town Administrator confirmed that the suit plot belonged to the plaintiff. The National Land Commission commenced the process of issuing leases on receipt of the stand premiums. The plaintiff took vacant possession, fenced the land parcel and proceeded to erect a church house called Revival Fellowship Church International, which has been in existence for 3 years.

He further states that on or about the 4th day of April 2016, the 1st defendant willfully trespassed upon the plaintiffs' land parcel No. UNS LIGHT INDUSTRIAL PLOT NO. 3 – NANDI HILLS. The plaintiffs' claim against the defendants jointly and severally is a declaration that the proprietorship interest in land parcel UNS LIGHT INDUSTRIAL PLOT NO. 3 – NANDI HILLS belongs to the plaintiff. The plaintiff further prays for a perpetual injunction restraining the 1st defendant from annexing, trespassing upon or in any other manner interfering with the plaintiffs' peaceful utilization and occupation of the suit parcel of land. The 2nd defendant filed defence stating that the 2nd defendant has no objection to the plaintiff's claim of ownership of the suit parcel of land and has never challenged the plaintiffs' ownership. Ultimately, the 2nd defendant states that there is no cause of action against the 2nd defendant.

Accompanying the suit is an application dated 25.4.2016 wherein the plaintiff seeks a temporary injunction restraining the 1st defendant, his servants and/or agents from annexing, trespassing, working or in any other manner disturbing the plaintiff, his servants, agents or parishioners worshipping at parcel of land in issue. In alternative, he prays for status quo pending hearing and determination of the suit. The application is based on grounds that the plaintiff is the genuine allottee of the suit land and that he has paid the stand premium and has taken possession and has erected a temporary church structure. He states that the National Land Commission is in the process of issuing title. The plaintiff states that the plaintiff will suffer irreparable loss as the parishioner's right to worship will be interfered with. The gist of the supporting affidavit is that the plaintiff was allocated the parcel of land and is in possession. He has constructed a church on the parcel of land. The plaintiff claims to have been using the land for 16 years. The National Land Commission is in the process of issuing titles.

The 1st defendant filed a replying affidavit whose gist is that he is a *bonafide* owner of the suit property which he refers to as Nandi Hills Township Plot No. 101. He claims to have been paying land rent and rates. According to the defendant, the plaintiff has no authority to lease the suit property to the church as he is not the owner. He claims that it has been resolved that the plaintiff surrenders the property to the 1st defendant.

I have considered the application, replying affidavit and submissions filed by both parties and do find that the plaintiff is suing the defendant in respect of UNS. LIGHT INDUSTRIAL PLOT NO. 3 – NANDI HILLS whilst the 1st defendant claims that it is Nandi Hills Township Lot No. 101. Both plot references are in respect of the suit property. Both parties have allotment letters. It is necessary that this matter proceeds for hearing to ascertain the import of the two allotment letters. I do find that the plaintiff has established a prima facie case with probability of success due to the fact that he has the allotment letter. On the other hand, the 1st defendant also has an allotment letter and therefore, his defence is not frivolous. We need to ascertain the parcel of land referred to by the two allotment letters. It appears that the parcel of land is developed with a church and therefore, if an injunction is not granted and the church destroyed, worshipers will suffer irreparably. The plaintiff succeeds in the two limbs for grant of injunction. If this case was to be determined on balance of convenience, it would tilt towards granting an injunction to maintain status quo as the plaintiff has been in occupation since 1999. The upshot of the above is that the application is allowed thus I grant a temporary injunction restraining the 1st defendant, his servants and/or agents from annexing, trespassing,

working or in any other manner disturbing the plaintiff, his servants, agents or parishioners worshipping at parcel of land in issue. Costs in the cause.

Dated and delivered at Eldoret this 25th day of January, 2018.

A. OMBWAYO

JUDGE