

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO.319 OF 2007

STEPHEN KAROMO MACHARIA.....PLAINTIFF

VERSUS

STEPHEN KARANI MACHARIA.....1ST DEFENDANT

KARURA FARMERS COMPANY LIMITED.....2ND DEFENDANT

RULING

In the application dated 11th May 2017, the Plaintiff seeks an injunction to restrain the 1st Defendant or his agents from entering, taking possession, selling, transferring, alienating, constructing, developing or interfering with the Plaintiff's quiet possession and enjoyment of Plot No. 358 on L.R. Number 8469/4 ("the Suit Property") situated in Nairobi County, pending hearing and determination of the suit. The Plaintiff seeks to have the injunctive orders enforced by the OCS, Buru Buru Police Station.

The Plaintiff claims to be the owner of the Suit Property. He alleges that the 1st Defendant has entered upon the Suit Property and commenced construction thereby dispossessing him of his plot. The Plaintiff avers that he has a *prima facie* case against the Defendants who have no rights to occupy his land.

The application is supported by the Plaintiff's affidavit. The Plaintiff claims to have been registered as a member of the 2nd Defendant on 4/7/1982 and that he was allocated the Suit Property after making various payments to the 2nd Defendant. The 2nd Defendant asked him to pay an additional sum of Kshs. 2454/= on 29/6/1989 which he duly paid. In 2016 the 2nd Defendant asked him to pay Kshs. 15,000/= as fees for processing the title. He paid this sum. He was informed by the Advocates processing the title in March 2017 that the process had stopped when it was realised that the same plot had been allocated to two people.

The Plaintiff filed this suit and application seeking injunctive relief when the 1st Defendant deposited building materials on the Suit Property showing he intends to commence development of the Suit Property. The Plaintiff is apprehensive that the Defendants may alienate the Suit Property.

The 1st Defendant filed a Replying Affidavit in opposition to the Plaintiff's application. He claims to have bought the Suit Property from the 2nd Defendant on 22/12/1983. He was issued with share certificate number 485 on 22/12/1983 confirming that he had been legally allocated Plot Number 358. He also paid an additional sum of Kshs. 2454/= to the 2nd Defendant on 7/8/1989. He annexed photographs showing he has built a pit latrine on the Suit Property and fenced it. He claims to have been in possession of the Suit Property since 1989. He urges the court to dismiss the Plaintiff's application and counterclaims for a declaration that he is the *bona fide* owner of the Suit Property.

The court has looked at the Plaintiff's share certificate no. 313 issued on 3/2/1984 showing that he had been legally allocated Plot No. 358. The Defendant holds a share certificate allocating the same plot. This is a case of double allocation of the same plot. It is difficult to tell who between the Plaintiff and 1st Defendant holds a better title at this stage of the proceedings. This can only be determined at the trial when it is hoped the 2nd Defendant will testify on who it sold the Suit Property to.

The court issues an injunction restraining all the parties from dealing with the Suit Property until the suit is heard and determined. Parties are directed to give discovery and set the suit down for hearing.

Dated and Delivered at Nairobi this 25th day of January 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Ngethe for the Plaintiff

Mr. Kangata for the Defendant

Mr. J. Okumu- Court Assistant