



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 388 OF 2017

BENSON NDICHU MWENDIA.....PLAINTIFF

VERSUS

JOHNSON BYEBEI TUM.....DEFENDANT

RULING

(Application for injunction; plaintiff demonstrating that he is proprietor of the suit properties; defendant having interfered with the same by erecting a wall; orders of injunction issued against the defendant but mandatory orders to compel destruction of the wall at the interlocutory stage denied and the same to await conclusion of the suit on merits)

1. This suit was commenced by way of a plaint that was filed on 12 October 2017. Together with the plaint, the plaintiff filed an application inter alia seeking orders to have the defendant restrained by way of an interlocutory injunction from entering or developing the land parcels Nakuru Municipality Block 15/682 and 683, pending hearing and determination of this suit, and for orders of mandatory injunction, directing the defendant to vacate and demolish the perimeter wall that he is said to have developed around the said properties, pending hearing and determination of this suit. It is that application which is the subject of this ruling.

2. The case of the plaintiff is that he is the registered proprietor of the said land parcels Nakuru Municipality Block 15/682 and 683 (hereinafter referred to as "the suit properties") having become so registered on 2 November 2006 and having been issued with a Certificate of Lease. He has averred that upon being registered as proprietor, he took possession and stationed a care taker. On 26 September 2017, some strangers unknown to him, entered the land, occupied it, and erected a perimeter wall and a gate. Upon investigation, the plaintiff avers that he discovered that the defendant got himself fraudulently registered as the proprietor of the suit properties. In his suit, the plaintiff wishes to be declared as the rightful proprietor of the suit properties and he has also sought orders of eviction and permanent injunction against the defendant.

3. Despite being served, the defendant did not file any reply to the application and has not filed any statement of defence. The only material that I have is therefore that presented by the plaintiff. In his supporting affidavit, the plaintiff has annexed the Certificates of Lease that he holds to the suit properties. He has also annexed some photographs showing the developments that have taken place which essentially is a wall.

4. The defendant has not tendered anything to show that he has any rights over the suit properties. I have no reason to doubt that the plaintiff is the registered proprietor of the suit properties, and being so registered, the plaintiff is entitled to exclusive ownership and possession of the suit properties. From the material placed before me by the plaintiff, I am satisfied that the plaintiff has demonstrated a prima facie case with a probability of success and stands to suffer irreparable loss if I do not restrain the defendant from any further interference with the suit properties. I do not therefore hesitate to allow the prayer for an interlocutory injunction restraining the defendant from entering or occupying the suit properties or developing the same pending hearing of the main suit. I however hesitate to issue any orders compelling the demolition of the wall before I hear the case and I really see no prejudice that the plaintiff stands to suffer if I do not order the destruction of the wall before hearing the case.

5. Following the above, I do issue the following orders :-

(i) That pending the hearing and determination of this case, the defendant, and any other person under the direction of the defendant, is hereby restrained by an order of injunction from entering, being upon, occupying, utilizing, or making any developments in the land parcels Nakuru Municipality Block 15/682 and 683.

(ii) That pending the hearing and determination of this case, possession of the suit properties being Nakuru Municipality Blok 15/682 and 683 shall be with the plaintiff.

(iii) That pending the hearing and determination of this suit, the defendant is hereby restrained from offering for sale, selling, charging, leasing, or in any other way entering into any dealings over the land parcels Nakuru Municipality Block 15/682 and 683.

(iv) That the plaintiff shall have the costs of this application.

6. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 23rd day of January 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mrs. Karen Wanderi for the plaintiff/applicant.

No appearance on the part of the defendant/respondent

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU