



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENTAL AND LAND COURT AT NAIROBI**

**E.L.C. CASE NO. 695 of 2016**

**HASSAN HAJI ABDI LADIF ..... PLAINTIFF**

**VERSUS**

**NAIROBI CITY COUNTY ..... 1<sup>ST</sup> DEFENDANT**

**JOSEPH MALAKWEN SITIENEI ..... 2<sup>ND</sup> DEFENDANT**

**AL MUSTAQBAL CO. LTD ..... 3<sup>RD</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

The Plaintiff seeks an injunction to restrain the Defendants from evicting him or trespassing, selling, charging, constructing, leasing or committing acts of waste on L.R. No. 209/8534/130 South C, Nairobi (“the Suit Property”) pending hearing and determination of this suit.

He claims the 1<sup>st</sup> Defendant allocated him the Suit Property vide the letter of allotment dated 25/11/1997 and that he paid the stand premium and other dues on 16//2/2016. He claims to have processed the allotment and that the Suit Property was transferred to him on 21/7/2010. He later learnt that there had been double allocation of the Suit Property to him and the 2<sup>nd</sup> Defendant. He avers that he entered into an agreement with the 2<sup>nd</sup> Defendant on 4/9/2014 to have their two names registered as co-owners of the Suit Property. However, he did not annex a copy of the agreement evidencing this. His complaint is that the 2<sup>nd</sup> Defendant is colluding with the 1<sup>st</sup> Defendant to transfer the Suit Property to the 3<sup>rd</sup> Defendant contrary to the earlier agreement for co-ownership of the plot. He is apprehensive that the Defendants may evict him from the Suit Property and that he stands to suffer loss and damage.

The 1<sup>st</sup> Defendant denies allotting the Suit Property to the Plaintiff and maintains that the documents that the Plaintiff relies on to prove his ownership of the Suit Property are not authentic. Further, the 1<sup>st</sup> Defendant denies that it demanded or received stand premium and other dues from the Plaintiff. It avers that the Plaintiff has been in illegal occupation of the Suit Property for which he ought to pay damages. The 1<sup>st</sup> Defendant submitted that the Plaintiff’s documents show that he is pursuing plot no. L.R. No. 209/8534/130; which is different from the Suit Property. The Plaintiff’s advocate termed this an error and apologised for the error while making her oral submissions. The 3<sup>rd</sup> Defendant’s counsel associated himself with the submissions of the 1<sup>st</sup> Defendant. He urged the court to dismiss the Plaintiff’s application for injunction stating that the 3<sup>rd</sup> Defendant is in occupation of the Suit Property.

Has the Plaintiff demonstrated that he has a *prima facie* case with a probability of success against the Defendants? The court thinks not. The Plaintiff admits there was double allocation of the Suit Property. He did not exhibit the memorandum of agreement to confirm that he entered into an arrangement with the 2<sup>nd</sup> Defendant for co-ownership of the Suit Property.

The application dated 22/6/2016 is dismissed with costs to the 1<sup>st</sup> and 3<sup>rd</sup> Defendants.

**Dated and delivered at Nairobi this 7<sup>th</sup> day of February 2018.**

**K. BOR**

**JUDGE**

In the presence of: -

Ms. Chepkong'a for the Plaintiff

Mr. Mapesa holding brief for Mr. Anyoka for the 3<sup>rd</sup> Defendant

No appearance for 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants

Mr. V. Owuor- Court Assistant