

REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT

AT NAIROBI

ELC CASE NO. 507 of 2017

STELLA KAGWIRIA KAMAU.....PLAINTIFF

VERSUS

PAUL NJUGUNA WAWERU.....DEFENDANT

RULING

The Plaintiff filed the application dated 28th July 2017 seeking an injunction to restrain the Defendant from dealing with the Plot number 223 situated in Kasarani Mwiki, Nairobi pending hearing and determination of her suit.

The Plaintiff claims that the Government of Kenya allocated the land known as L.R. Number 8470 (L.R. 10794/1) in Kasarani Mwiki to a group of squatters known as Ruaka Squatters Upgrading Scheme. The land was then subdivided and plots created out of it.

The Plaintiff claims to have bought Plot number 223 from Samuel Kuria Muhia in 2016 at the consideration of Kshs. 350, 000. She contends that the Defendant unlawfully entered upon her land, dug trenches and deposited building materials with a view to constructing on her plot.

On his part, the Defendant argues that he bought Plot number 268 in December 2010 and took possession of the plot.

Both the Plaintiff and the Defendant annexed copies of the certificates that Ruaka Squatters Upgrading Scheme issued to them showing that they own Plot numbers 223 and 268 respectively.

The issue for determination is whether the Plaintiff has demonstrated that she has a *prima facie* case against the Defendant. It would seem that both parties bought plots that fall within Ruaka Squatters Upgrading Scheme. However, the bone of contention is whether the disputed plot is plot number 223 or it is plot number 268. Neither party produced a copy of the area map showing the exact location of both plots on the ground. In the circumstances, the court is unable to determine whether the Defendant is constructing on plot number 223 and not 268.

In the interest of justice, it is reasonable and fair to preserve the Suit property by restraining both parties from dealing with the plot in dispute until a determination is made as to what plot number it is. Each party will bear its own costs.

Dated and delivered at Nairobi this 5th day of February 2018.

K. BOR

JUDGE

In the presence of: -

Ms. Mwangi holding brief for Mr. Maina for the Plaintiff

Ms. Mutemi for the Defendant

Mr. V. Owuor- Court Assistant