



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 81 OF 2018

PETER NJUGUNA GITAU T/A NJUPE ENTERPRISES....PLAINTIFF

VERSUS

PETER NDUNGU MUNGAIDEFENDANT

RULING

(Application for injunction; plaintiff demonstrating that he owns the suit land and has a licence to operate a car wash; defendant interfering with the plaintiff's use of the premises; no response filed by the defendant to justify his actions; plaintiff establishing a prima facie case; application allowed)

1. This suit was commenced by way of a plaint which was filed on 19 February 2018. In the suit, the plaintiff has pleaded that he is the registered owner of the land parcel Nakuru/Municipality Block 10/328. He has averred that on 25 August 2017, he was issued by the County Government of Nakuru, with a Trade Licence, allowing him to use the premises as a car wash. However, he was subjected to harassment and intimidation from rowdy youth when he sent his employees to the site, and they also refused to allow customers to have their vehicles washed at the suit property. He then filed a Miscellaneous Case before the Magistrate's court for an order to have the Nakuru OCS give him security. This was provided, and it is then, that the defendant came forward claiming ownership of the suit land. It is pleaded that on 14 February 2018, the defendant fenced off the suit land thus blocking the plaintiff from accessing the land. In this suit, the plaintiff has sought a declaration that he is the absolute legal owner of the suit property and a permanent injunction to restrain the defendant from any interference with the land.

2. Together with the plaint, the plaintiff filed an application for injunction, to have the defendant restrained from the suit property, until this case is heard and determined. It is that application which is the subject of this ruling.

3. Despite being served with the pleadings and the application, the defendant has not entered appearance and has not filed anything to oppose this motion. The only material that I have is therefore that supplied by the plaintiff.

4. In his supporting affidavit, the plaintiff has annexed a copy of the Certificate of Lease, indicating that he holds a leasehold title to the suit property. He has also annexed a copy of a trade licence issued by the County Government of Nakuru allowing him to use the suit premises as a car wash. There are also photographs of the suit property which show that the same has been fenced off using iron sheets.

5. From the material presented before me, it appears that the plaintiff is indeed the registered owner of the suit property and I can see that he has been authorized to operate a car wash on the property. As owner, the plaintiff has the exclusive right of use of the suit land. The defendant has not come to court to give any explanation as to why he has interfered with the suit land, or why he has attempted to prevent the plaintiff from utilizing the suit property. I am of the view that the plaintiff has demonstrated a prima facie case with a probability of success, and if the injunction is not granted, the plaintiff stands to suffer irreparably as the defendant will continue with his actions.

6. I therefore allow this application for injunction. I issue an order stopping the defendant and/or his servants/agents from entering, being upon, fencing, constructing, utilizing, interfering in any way, or stopping the plaintiff and/or his servants from using the land parcel Nakuru Municipality/Block 10/328, until this case is heard and determined. I also award the costs of this application to the plaintiff.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 25th day of April 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Mr. Robert Ndubi 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