



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 11 OF 2018

CHERUIYOT HENRY KIPTANUI.....PLAINTIFF

VERSUS

JAMES KOSKE.....DEFENDANT

RULING

(Application for injunction; plaintiff being owner of suit land and defendant interfering with it; no response by defendant to explain his actions; application allowed).

1. This suit was filed by way of plaint on 22 January 2018. In the suit, the plaintiff has contended that he is the owner of the land parcels Nakuru Municipality Block 17/649 and 650, having purchased the two properties from their previous owners in the year 2012. It is pleaded that the plaintiff thereafter embarked on constructing a boundary wall, but on 18 January 2018, the defendant came to the suit properties and chased away the construction workers while brandishing a gun and carted away some signposts. In the suit, the plaintiff seeks a declaration that he is the legitimate owner of the suit properties, an order of permanent injunction against the defendant, and an order of mandatory injunction for the defendant to return the signposts that he carted away.

2. Together with the plaint, the plaintiff filed an application for an interlocutory injunction, seeking to restrain the defendant from developing, selling, alienating, entering and/or interfering in any way with the suit properties until this suit is concluded. He has also sought orders of mandatory injunction for the defendant to return the signposts. To his supporting affidavit, the plaintiff has inter alia annexed copies of title to the two suit properties.

3. Despite being duly served, the defendant did not file anything to oppose the application. The only material that I have is therefore that tendered by the plaintiff.

4. I have gone through the same. I have seen that the plaintiff appears to be the title holder to the two suit properties. I therefore am persuaded, prima facie, that the plaintiff is the legal owner of the suit properties. The defendant has not given any document or given any reason as to why the plaintiff cannot continue to work on the suit land and has not persuaded me to stop the plaintiff from working on the land. The plaintiff is thus deserving of an order of injunction. On the order to return the signposts, the plaintiff can as well claim damages, and do fresh signposts. I do not know the whereabouts of these signages and I do not wish to make an order for return in the event that the same are not available. The plaintiff can pursue the same at the hearing of the suit or claim damages in the alternative.

5. From the above discourse, I make the following orders:

(i) That pending hearing and conclusion of this suit, an order of injunction is hereby issued stopping the defendant from entering, being upon, or in any other way interfering with any construction or use and possession by the plaintiff of the land parcels Nakuru Municipality Block 17/649 and 650.

(ii) That the plaintiff is free to continue with construction work within the land parcels Nakuru Municipality Block 17/649 and 650.

(iii) 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 12th day of April 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :-

Ms. Moenga present holding brief for Mr. Akang'o for the plaintiff/applicant.

No appearance on the part of M/s Cherutich & Co. for defendant/respondent.

Court assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU