



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**CASE NO. 164 OF 2017**

**DANIEL KIPKORIR CHEUIYOT .....PLAINTIFF**

**VERSUS**

**KIPKEMOI MUTAI & 6 OTHERS.....DEFENDANTS**

**RULING**

1. Through plaint dated 11<sup>th</sup> April 2017, the plaintiff averred that he was the owner of a parcel of land known as Nakuru/Nyota Pendle Tregana/26 (the suit property). He accused the defendants of trespassing onto and occupying the suit property. Accordingly, he sought judgment for eviction of the defendant and demolition of their structures. Among the documents he submitted in support of his case were a copy of an allotment letter from Ministry of Lands and Settlement dated 10<sup>th</sup> September 2001 and a title deed dated 26<sup>th</sup> March 2013.

2. The defendants reacted to the plaint by filing a defence in which they generally denied the allegations made by the plaintiff.

3. Subsequently, the defendants moved the court through Notice of Motion dated 27<sup>th</sup> November 2017 seeking the following orders:

***1. Spent.***

***2. That pending the hearing and determination of this application this honourable court do issue an order directing the Land Registrar Nakuru and the County Land Adjudication and Settlement Officer to investigate and give a report to this honourable court on the authenticity of the documents produced by the plaintiff in this suit that is allotment letter dated 10<sup>th</sup> September 2001, official receipt from the Ministry of Lands dated 10<sup>th</sup> May 2005 and title deed dated 26<sup>th</sup> March 2013 of parcel of land known as Nakuru/Nyota Pendle Teregana/26.***

***3. That this honourable court do summon the Land Registrar Nakuru and County Land Adjudication and Settlement Officer to come and testify to this honourable court on the authenticity of the documents produced by the plaintiff.***

***4. That costs of this application be provided for.***

4. The application was supported by an affidavit sworn by the 1<sup>st</sup> defendant. He deposed that upon perusing the documents submitted by the plaintiffs, the defendants made enquiries at the Ministry of Lands and discovered that the documents submitted by the plaintiff did not match the records at the Ministry of Lands. They annexed a copy of a letter from County Land Adjudication and Settlement Department dated 20<sup>th</sup> November 2017.

5. The plaintiff opposed the application through his replying affidavit sworn on 20<sup>th</sup> February 2018. He deposed that the court has no jurisdiction to compel the persons named in the application to carry out an investigation. He added that the defendants are free to call the persons as their witnesses. He further deposed that the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed ELC No. 598/2016 wherein the court dismissed an application on 23<sup>rd</sup> November 2017.

6. The application was heard by way of written submissions. The applicants filed submissions on 21<sup>st</sup> May 2018 while the respondent filed submissions on 26<sup>th</sup> April 2018. I have considered the application, the affidavits and submissions.

7. The applicants seek orders to compel the Land Registrar Nakuru and the County Land Adjudication and Settlement Officer to investigate and give a report to the court on the authenticity of the plaintiff's documents. These are documents which the plaintiff is seeking to rely on in support of his case. It is important to note that the matter is still at the stage of interlocutory applications. Hearing of the suit is yet to commence.

8. Parties to this case are all claiming the suit property. In an adversarial system such as ours, each party has to put their best foot forward both in terms of the facts and the law at the trial. The plaintiff as the one moving the court will have to discharge the burden of proof cast upon him. The defendants will also have a chance to rebut any piece of evidence that the plaintiff may put before the court. The court must adopt the stance of a neutral arbiter. The court cannot help any party to build their case or to weaken the case of their opponent. That extends to the aspect of how and where every party gathers and presents evidence in support of their case. I therefore must decline the invitation to assist the defendants to gather evidence in support of their case.

9. The Orders sought in the application are targeted against the Land Registrar Nakuru and County Land Adjudication and Settlement Officer. Both are not parties to this case. Both will therefore not have a chance to be heard before the orders can be made. The right to a hearing is a cardinal aspect of our law and I cannot therefore make orders against the two officers in the manner sought.

10. The applicants have not demonstrated that they have sought the intervention of the Land Registrar Nakuru and County Land Adjudication and Settlement Officer and that those two officers have been unable or unwilling to assist in the absence of the court order. Even then, the difficulties of the court being drawn into the preparation of the defendants' case and of orders being made against persons who are not parties to the case would remain.

11. The plaintiff mentioned that there is another case being Nakuru ELC No. 598 of 2016 which concerns the suit property and wherein the defendants herein are parties. I have perused the said file and I note that the said matter concerns the same property as this suit and further that the 1<sup>st</sup> and 2<sup>nd</sup> defendant herein are the plaintiffs therein. The defendants therein are however not parties to this present suit. Upon delivery of this ruling, I will give directions to enable the court consider whether consolidation of the two suits is possible.

12. In view of the foregoing discussions, I find no merit in Notice of Motion dated 27<sup>th</sup> November 2017. The application is dismissed with costs.

**Dated, signed and delivered in open court at Nakuru this 30<sup>th</sup> day of October 2018.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

No appearance for the defendants/applicants

Mr Simiyu holding brief for Mr Kipkenei for the plaintiff/respondent

Court Assistants: Gichaba & Lotkomo