



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 153 OF 2015**

**ROBERT KAMAU NJONJO .....PLAINTIFF**

**VERSUS**

**TARABETE /BMU.....DEFENDANT**

**RULING**

***(Application for injunction; plaintiff alleging to be owner of suit land and alleging interference from defendant; no proof that the alleged interference is on the plaintiff's land; activities complained of having been in place for a considerable duration of time; doubt as to the capacity of the defendant to be sued; application dismissed)***

1. This suit was commenced by way of plaint on 15 May 2015. In the suit, the plaintiff claims to be the owner of the land parcel Maela/Ndabibi Block 2/772. He has pleaded that in the year 2014, he established that the defendant, encroached into his land and constructed permanent fish ponds and fish processing tables without his consent. In the suit, he has sought orders to have the defendant evicted from the suit premises together with costs and any other remedy that the court may wish to grant.

2. Together with the suit, the plaintiff filed an application for injunction seeking to have the defendant restrained from continuing with fishing activities or any further construction, or dealings over the suit land pending hearing of this case. It is that application which is the subject of this ruling.

3. No appearance has been entered for the defendant and nothing has been filed on its behalf.

4. I have considered the application. I have seen annexed to the supporting affidavit of the plaintiff, the title deed to the land parcel Maela/Ndabibi Block 2/772. It does therefore seem that the plaintiff is the owner of the suit land. I however have no proof that the activities complained of by the plaintiff are actually situated in his said land. I have seen a letter dated 23 January 2015 written by the Chief of Malewa Location, stating that the fish project complained of is not in any individual's farm and that "the beacons of Njonjo's Farm ( I believe the suit land) are far away from the beach...". I think given this position, it was incumbent upon the plaintiff to demonstrate through evidence, that the activities that he is complaining of are actually in his parcel of land. I have no such evidence and in my view, it would not be wise to issue an injunction given this lacunae.

5. Moreover, I do note that the plaintiff is complaining that his land was encroached in the year 2014. I have seen from the photographs annexed what appear to be fish ponds in full operation. The plaintiff has

not disclosed where he was since the year 2014 while the construction of the fish ponds was ongoing. He has not therefore explained his inactivity and why he let the construction continue despite him being owner of the land.

6. Finally, I have serious doubts as to whether or not the defendant has capacity to be sued. In the plaint, it is stated that the defendant is an organization. What sort of organization is not disclosed. I raised this issue with Mr. Kiragu for the plaintiff and a further affidavit was filed which shows that there was a meeting held by Tarambete Landing Beach and which also show that there is a Chairman, Vice Chairman, Secretary and Treasurer, as executives. It is still not disclosed in these minutes what sort of organization the defendant is or whether it has capacity to sue or to be sued. To be fair, there are some instances when a person may not really know who to sue, or whether from the face of a particular name, it can be recognized whether the entity has capacity or not. Such person need not be penalized but given the benefit of doubt as the plaint may still be amended at a future time. But in our case, it does seem to me that the plaintiff does know, or at least is in a position to discern, whether or not the entity he has named as defendant is a legal entity or not. If not sure, the safer option to take would be to sue the individuals named as its executives. As matters stand, I am not fully convinced of the capacity of the defendant and that may explain why no appearance has been filed on its behalf.

7. From the above discourse, I am not satisfied that the plaintiff has displayed a prima facie case with a probability of success. I am not therefore persuaded to grant the order of injunction and the plaintiff will have to list his case for hearing and prove it without enjoying the benefit of an injunction. This application is hereby dismissed but I make no orders as to costs.

8. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 22<sup>ND</sup> day of February 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of**

Mrs. Murande holding brief for Mr. Kiragu for the plaintiff/applicant

N/A for defendants

Court Assistant: Nelima

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**