



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO. 48 OF 2014**

**ROBERT MAINA WAMBUGU .....1<sup>ST</sup> PLAINTIFF**

**JOHN B. GITHIORI NJOGO.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**THE COUNTY GOVERNMENT OF NAROK.....1<sup>ST</sup> DEFENDANT**

**MATHEW KIRIAGO AKAMA .....2<sup>ND</sup> DEFENDANT**

**AND**

**TOOTO OLE SOPIA.....3<sup>R</sup> PROPOSED DEFENDANT**

**LETAIYAN OLE DIKIRR.....4<sup>TH</sup> PROPOSED DEFENDANT**

**SALAU OLE KARKAR.....5<sup>TH</sup> PROPOSED DEFENDANT**

**RULING**

***(application to enjoin parties as defendants; suit over land which is also claimed by the proposed defendants; application allowed; status quo ordered to be maintained pending hearing of suit).***

1. This suit was commenced by way of plaint on 18 February 2014. It is the plaintiffs' case that in April 2009, they applied to the 1<sup>st</sup> defendant's predecessor, the Town Council of Narok, to be allotted the parcel of land known as Plot No. 825 Block II situated in Narok Town. It is pleaded that the plaintiffs' application was approved and they were issued with an allotment letter dated 14 May 2009 and they paid the monies that they were asked to pay. It is averred that they then took possession of the land, fenced it and commenced the process of obtaining title. It is pleaded that sometime in February 2014, the County Government of Narok without any justifiable reason, purported to subdivide the land into 9 parcels and allocated them to unknown third parties. It is pleaded that the unknown 3<sup>rd</sup> parties have now removed the plaintiffs' fence on the suit property and intend to commence construction. In the suit, the plaintiffs has sought orders of permanent injunction against the defendant from interfering with their quiet enjoyment of the suit land and a declaration that the plaintiffs are the owners of the suit land.

2. Together with the plaint, the plaintiffs filed an application for interlocutory injunction seeking to have the County Government of Narok restrained from interfering with the suit land pending hearing and

determination of the case.

3. Vide an application dated 22 April 2015, the plaintiffs filed a motion to enjoin one Mathew Kiriago Akama to this suit and for injunction to restrain him from interfering with the suit land pending hearing of the case. It was stated inter alia that the said Mr. Akama has attempted to forcibly enter into the suit premises claiming that he purchased it from the County Government of Narok. The application to enjoin the said Mathew Kiriago Akama was allowed and he is now the 2nd defendant in this suit. The 2nd defendant entered appearance and filed defence. He pleaded inter alia that he purchased a plot No. 998 Block 11 from one Leteyian Ole Dikirr who had been allotted the land by the Town Council of Narok. He has pleaded that the plot No. 825 is no longer in existence as it was subdivided and among the portions that ensued is the Plot No. 998. He also filed a counterclaim for orders that the plaintiffs be permanently restrained from the said Plot No. 998.

4. Through an application dated 9 June 2015, the plaintiffs have now applied to further amend their plaint to include three other parties, that is, Tooto Ole Sophia, Letaiyan Dikirr and Salau Ole Dikirr as defendants. It is averred that the three proposed defendants have also made attempts to make entry into the property claimed by the plaintiffs.

5. The application is opposed by the 2nd defendant and the proposed new defendants. In his replying affidavit, the 2nd defendant has averred inter alia that there is no nexus between the proposed new defendants and the plot in dispute.

6. The proposed defendants on their part have contended, through a replying affidavit sworn by Tooto Ole Sophia, that Tooto is the bona fide owner of the Plots identified as Plot No. 999, 1002, 1003, and 1007 Block 11 Stadium Ward in Narok. He has stated that he purchased the same from one Tumalel Ole Partop in December 2012. He has pointed out that the plaintiffs have not challenged the interest of the said Tumalel Ole Partop. It is also his view that the plaintiffs have not established the relationship between what they claim and the Plot numbers 999, 1002, 1003, and 1007.

7. I have considered the application.

8. The case of the plaintiffs is over a Plot described as Plot No. 825 Block II. They wish to sue the defendants because they have interfered with their possession of it. I do note that the 2nd defendant and the proposed 3rd to 5th defendants argue that they own plots which bear different numbers. To me this is immaterial so long as the ground claimed is the same. What needs to be determined in this suit, is who should own the soil where the land in dispute lies, whether identified as Plot No. 825 or by any other description. Of course if it is later found out that the plots claimed by the plaintiffs and defendants lie on different ground, then the plaintiff will not have a cause of action against the defendants. But I must allow him the opportunity to plead his case as he wishes and to enjoin all parties whom he feels are necessary for the proper determination of their case.

9. It is for the above reasons that I allow the application to enjoin the proposed 3rd to 5th defendants and I do grant leave to the plaintiffs to proceed and amend their plaint within the next 14 days.

10. On the prayers for injunction, it is my order that the status quo prevailing be maintained until this case is heard and determined. I further order that no party should enter into any dealings in relation to the property and no party should make any structures or developments in the disputed property.

10. On costs, the same shall be in the cause.

11. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 22nd day of February 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of :**

No appearance for Kimondo & Gacoka for plaintiff/applicant.

Mr. Alao holding brief for Mr. Otieno for proposed defendants

Mr. Ole Yenko for 1<sup>st</sup> defendant- absent

Mr. Ocheo Onduso for 2<sup>nd</sup> defendant :absent

Court Assistant: Nelima

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**