



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT

AT MILIMANI

ELC NO. 1329 OF 2014

BONIFACE MACHARIA KAMANDEAPPLICANT

=VERSUS=

SAMUEL NJOROGE MUCHIRI.....RESPONDENT

RULING.

1. This is a Ruling in respect of two separate applications both of which seek orders of injunction. The first application is dated **9th October 2014**, filed by the Plaintiff. The second application is dated **8th December 2015**, filed by the Defendant.
2. Though both parties seem to be litigating on two separate plots, the dispute seems to center on one plot on the ground. The Plaintiff contends that he is the beneficial owner of an unregistered plot known as plot **No.4/480 Soweto**. The Defendant on the other hand contends that he is the beneficial owner of an unregistered plot known as **plot 3/ 339 Soweto**. Both claim to have been allocated their respective plots by what was then known as City Council of Nairobi.
3. The Plaintiff contends that he was allocated **plot No. 4/480 Soweto** in **1991**. That the Defendant has since trespassed into his plot where he has put up illegal structures without his permission.
4. The Defendant on his part contends that the applicant's application is an abuse of the process of the Court. That he filed a suit against the Plaintiff in **Milimani Chief Magistrate's Court being civil case No. 5682 of 2011**. That he obtained orders of demolition against the Plaintiff who was then evicted from **plot No.3/339**. That the Plaintiff has since gone back and has put up structures which he intends to rent out.
5. The Defendant further contends that the Plaintiff has been trying to sell **plot no. 3/339** but that his efforts have always been thwarted by the vigilant efforts of his people on the ground. He argues that the suit by the Plaintiff is actually **res-judicata** and that the same should be struck out.
6. In his application, the Defendant wants the Plaintiff to be restrained from carrying on further construction and that the court orders that the structures which have been put up be demolished.
7. I have carefully gone through the two applications, the pleadings, and the submissions by counsel for the two parties. What is clear is that though both parties claim to be litigating on two separate properties, the truth of the matter is that the property on the ground is one and the same.
8. Though the Plaintiff denies that he is the one who was sued in **Milimani Chief Magistrate's Civil Case No. 5682 of 2011**, a clear look at the annexures to the Replying Affidavit in opposition to the application

dated **9th October 2014**, shows that though the defendant in that suit was **Samuel Macharia**, the names **Boniface Macharia Kamande** featured and it was generally agreed that the two were one and the same person. It is therefore ironical for the plaintiff to turn around and claim that he was not the person sued in the Lower Court case.

9. The Plaintiff attempted to set aside the demolition order in vain. He in fact acknowledges that the order was executed against him. Though he claims this was wrong, I find that in fact he was the one who was sued in the lower Court and that he is the same person who moved to the Environment and land Court and filed a case regarding the same property on the ground but bearing a different number.

10. When the Plaintiff attempted to set aside the orders which the defendant had obtained in the lower court, the trial magistrate in his ruling found that the plaintiff did not present credible documents in support of his claim. It was found out that the documents he had, had been altered from one plot to another and the person who altered the same is not known.

11. The Plaintiff alleged to have been allocated plot no. 4/480 in 1991. According to his ID Card by 1991 he was only 13 years old and in any case, further documents he produced showed that he was allocated the plot in 2009. This further cast doubt on the plaintiff's claim.

12. This is an application for injunction and an applicant is not only expected to approach the court with clean hands but also meet the conditions for grant of an injunction. As at the moment there is no evidence that **plot No.3/339 and plot 4/480** are distinct plots. The two parties are fighting over the same plot on the ground. As has been pointed hereinabove, the Plaintiff is not being clear on his claims. There are doubts as to the authenticity of his documents. In the circumstances one cannot say that he has demonstrated that he has a prima facie case with probability of success.

13. On the other hand, the defendant is seeking injunctive orders in respect of **plot no. 3/339 Soweto**. The subject of this suit is plot No.4/480 Soweto. There was no conclusive finding that the ground which the two parties are claiming is not **plot No.3/339**. The Defendant has not raised any counter-claim. It is therefore difficult to find any basis upon which he can be granted an injunction. In any case, there is no clear evidence as to the position of the two plots on the ground. There was an attempt to send a surveyor to the ground to ascertain the position but this was not done as the plaintiff is alleged to have not been co-operative. I therefore find that neither the Plaintiff nor the Defendant have demonstrated that they have prima facie case with probability of success.

This being the case, I find that neither of the two applications can succeed. The same are hereby dismissed with an order that each party do bear their own costs.

Dated, Signed, and delivered at Nairobi this **6th** day of **February 2017**.

E.O.OBAGA

JUDGE

In the absence of advocates who were aware of the date and time of Ruling. Parties to read Ruling at the registry.

Hilda : Court Assistant

E.O.OBAGA

JUDGE