



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO 22 OF 2017

GEOFFREY J. KIBANGAPLAINTIFF/APPLICANT

VERSUS

JOSEPH GITUMBI WAMBUGU.....DEFENDANT/RESPONDENT

RULING

1. The Notice of Motion dated 31st January, 2017 seeks the following orders:-

1. Spent.

2. THAT pending inter-partes hearing of the application, a temporary injunction be issued restraining the defendant/respondent, his family members, representatives, employees, servants, agents and/or anybody else acting or claiming for, through or on his behalf or acting at his behest, direction or instructions, from entering into, trespassing onto, effecting any form of construction or developments on, or whatsoever interfering with the Plaintiff's/ applicant's exclusive, uninterrupted and undisturbed actual possession, user and enjoyment of all that plot number **TIMAU /27615**, measuring about **45 by 105** feet, situated in Timau Town within Meru County.

3. Orders as in prayer 2 but pending the hearing and determination of the suit.

4. THAT costs of the application be provided for.

2. Grounds in support of the application are:-

1. THAT the Plaintiff/applicant is the sole owner of the suit plot.

2. THAT on or about 26:01:2017, the defendant/respondent and his gents, forcibly and illegally stormed into, and fenced the suit plot using iron sheets, with the intention of promptly building permanent houses thereon, and deprive the plaintiff/applicant of his afore-said plot.

3. THAT the defendant/respondent has no protectable interest or right in the suit plot.

3. Applicant has also filed a Supporting Affidavit where he has deponed has follows:-

1. **THAT** he is the Plaintiff/applicant herein, hence competent to swear the affidavit.

2. **THAT** he is the owner of plot No. TIMAU/27615, measuring about 45 by 105 feet, situated in Timau Town, within Meru County. (Annexed as " GJI" is my ownership confirmation documents).

3. **THAT** on or about 26:01:2017, the defendant/respondent and his hired agents forcibly stormed onto plaintiffs said plot and fenced it off using iron sheet in readiness to commence erecting permanent construction thereon as per annexures GJ2.

4. **THAT** despite plaintiff's protestations, the defendant/respondent and his afore-said agents vowed to hurriedly construct the intended houses in order to effectively evict plaintiff from the afore-said plot.

5. **THAT** the defendant /respondent alleges that he bought the said plot and paid for it fully.

6. **THAT** vide an agreement dated 26:10:2007 , plaintiff had sold the said plot to the defendant /respondent at Ksh. 2,475, 000, but he failed to pay the purchase price as agreed as per annexure GJ3.

7. **THAT** when they executed the agreement on 26.10.2007, the defendant/respondent paid Kshs.1,000,000, as per the acknowledgement receipt annexed"GJ4".

8. **THAT** clause 1(b) of the afore-said sale deed obligated the defendant/respondent to pay the plaintiff the balance of Ksh, 1,475,000 on or before 15:01:2008, but he has never done so to-date.

9. **THAT** later,plaintiff and the defendant/respondent exchanged correspondence but he, (defendant) did not heed.

10. **THAT** the defendant/respondent intends to grab the said plot and enrich himself unjustly at the expense of the plaintiff yet he has no justifiable or protectable right or interest in the said plot.

11. **THAT** THE Defendant/respondent is a monied person and unless urgently restrained, he shall certainly construct on the said plot and cause irreparable harm, loss and damage.

3.The application came up for inter partes hearing on 14/2/2017.The court ascertained that the Respondent defendant had been served but he was absent .A perusal of the documents annexed to the application ,particularly the document of title indicate that the applicant is the registered owner of the parcel of land. The photographs also show that some kind of fencing is going on.

4. In the circumstances, I do find that the application is merited. I hereby grant the temporary injunction in terms of prayer 3 but for a period of **SIX MONTHS**.

DELIVERED IN OPEN COURT AT MERU THIS 3RD DAY OF MARCH, 2017 IN THE PRESENCE OF:

CA: Kananu

Applicant present

Respondent absent

L. N. MBUGUA

JUDGE