



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO. 427 OF 2016**

**ANNA CHEBET LANGAT.....PLAINTIFF**

**VERSUS**

**DAVID TESSOT.....DEFENDANT**

**RULING**

***(Application for injunction; principles to be applied; plaintiff being owner of suit land and defendant interfering with it; no response filed by the defendant; application allowed; defendant to stay away from the suit land pending hearing of the suit)***

1. This suit was commenced by way of plaint filed on 11 October 2016. In the plaint, the plaintiff has pleaded that she is the owner of the land parcel Nakuru/TinetKabongoi Settlement Scheme/1304. She has pleaded that this land was allocated to her in the year 1977 by the Ministry of Lands. She has pleaded that she has been in peaceful occupation of the land until the month of June 2015, when the defendant forcefully invaded the property. The defendant upon being confronted, fled, only to return in the month of February 2016. It is averred that the defendant constructed some temporary structures and started sowing maize without any colour of right. In the suit, the plaintiff wants an order that the defendant be permanently restrained from the land, an eviction order and vacant possession.

2. Together with the suit, the plaintiff filed an application for injunction seeking to have the defendant restrained from the land pending hearing and determination of the case. It is that application which is the subject of this ruling.

3. Despite being served, the defendant has not filed anything to oppose the motion. The only material that I have is therefore that presented by the plaintiff. I have gone through the affidavit in support of the application. I have seen annexed, a copy of the title deed showing that the plaintiff was issued with title to the suit land on 12 October 2005. I have also seen photographs depicting the alleged trespass on the part of the defendant.

4. The defendant has not filed anything to demonstrate that he has any rights over the suit land. I do not see why he should remain on the suit land pending the hearing of the case. I am of the view that the plaintiff has demonstrated a prima facie case with a probability of success and deserves to be in possession of the land as we determine the case.

5. For the above reasons, I allow this application for injunction. I hereby issue an order, that pending the hearing and determination of this case, the defendant be hereby restrained from entering, being upon, living in, cultivating, or in any other way making use of the land parcel Nakuru/TinetKabongoi

Settlement Scheme/1304 or in any other way interfere with the plaintiff's possession.

6. The plaintiff shall also have the costs of this case.

**Dated, signed and delivered in open court at Nakuru this 1<sup>st</sup> day of March 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of :**

No appearance on the part of M/s Ikua Mwangi &Co Advocates for the plaintiff/applicant

No appearance on the part of the respondent

Court Assistant :Nelima

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**