



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE NO. 357 OF 2015

JOSHUA KIBII LANGAT.....PLAINTIFF

VERSUS

JULIUS KOECH.....DEFENDANT

RULING

(An application for injunction to restrain the defendant from interfering with a parcel of land; plaintiff alleges that he is the legal owner of the land and that the title deed was handed to him; the title deed not exhibited; no prima facie case established; application dismissed)

1. The plaintiff filed the suit herein on 21st December 2015. In the plaint he seeks judgment against the defendant as follows:

- a. A mandatory order of injunction be issued against the defendant [sic] by himself, his agents or servants restraining them from interfering with LR. No. NAKURU/KERIGET/BARAGET/651 or a portion thereof without a lawful order.*
- b. Costs of the application [sic] be provided for.*
- c. Any other or further relief that that this honourable court may deem fit and just to grant.*

2. Together with the plaint, the plaintiff filed Notice of Motion dated 21st December 2015 in which he seeks the following prayers:

- a.*
- b.*
- c. A temporary order of injunction be issued against the defendant his agents or servants restraining him from entering, remaining, cultivation [sic] fencing or in anyway [sic] interfering with LR. No. NAKURU/KERINGET/BARAGET/651 or any portion thereof until this suit is heard and decided.*
- d. Costs of the application be provided for*

3. The application is supported by the affidavit of the plaintiff and is based on the grounds that:

- a. The plaintiff is the legal owner of LR. No. NAKURU/KERINGET/BARAGET/651 having*

purchased it from one Barsuch Nyamboi A. Cheptoo the registered owner in the year 2007.

b. The defendant owns the neighboring piece of land.

c. The defendant has without lawful orders or claim entered into the plaintiff's piece of land and started fencing off a portion thereof without the plaintiff's consent or authority prompting the present proceedings.

4. This ruling is in respect of the Notice of Motion dated 21st December 2015.

5. Despite being duly served with both Summons to Enter Appearance and the application, the defendant neither filed any response to the application nor attended its hearing. The application therefore proceeded unopposed.

6. The plaintiff's case is that he bought the property known as LR. No. NAKURU/KERINGET/BARAGET/651, the suit property, from one Barsuch Nyamboi A. Cheptoo who handed over to him the title document. Though the title is referred to at paragraph 4 of the supporting affidavit as annexure "JKL-II" and in the Plaintiff's List of Documents as item No. 2, no copy of the title was annexed either to the supporting affidavit or to the Plaintiff's List of Documents. The court has therefore not been able to ascertain who the registered proprietor of the suit property is.

7. The plaintiff accuses the defendant of excising a portion of the suit property and fencing it. He deposes that he owns the entire parcel comprised in LR. No. NAKURU/KERINGET/BARAGET/651.

8. To succeed in the application, the plaintiff needs to establish a *prima facie* case with a probability of success. The plaintiff also needs to show that damages will not adequately compensate him. One important ingredient that goes into establishing a *prima facie* case in a matter such as this is that the plaintiff needs to show a clear nexus between him and the property that he wishes to be preserved. To the extent that the plaintiff asserts that he owns the property he must exhibit a copy of the title document or some other acceptable documentary proof of ownership. The plaintiff herein has failed to do so. I therefore have no hesitation in finding that no *prima facie* case with a probability of success has been established.

9. I am aware that the plaintiff exhibited a copy of a sale agreement between himself and Barsuch Nyamboi A. Cheptoo. This however is not adequate considering that the plaintiff deposed that the title document was handed to him by the said vendor. Nothing would have been easier than to exhibit a copy or explain failure to exhibit it.

10. In view of the plaintiff's failure to establish a *prima facie* case, I do not need to inquire into the remaining tests for granting an injunction.

11. In the end, I dismiss the Notice of Motion dated 21st December 2015. Since the defendant did not respond to or oppose the application, I make no order on costs.

12. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 4th day of April 2017.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the plaintiff

No appearance for the defendant

Court Assistant: Gichaba