



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO.95 OF 2017**

**MARY NJERI MUNGAI.....PLAINTIFF**

**VERSUS**

**TEKET OLE MUNTET.....1<sup>ST</sup> DEFENDANT**

**PAUL SITIYO MUNTET.....2<sup>ND</sup> DEFENDANT**

**RULING**

***(Application for injunction; plaintiff demonstrating that she is the registered owner of the suit land; defendant entering the said land and putting up a structure; no response to the application from the defendants; plaintiff establishing a prima facie case; application for injunction allowed)***

1. This suit was commenced by way of a plaint that was filed on 8 March 2017. The plaintiff has averred that she is the registered proprietor of the land parcel Naivasha/Moi Ndabi/452 measuring 2.0 Hectares. The suit land was offered to her by the Government of Kenya and on 16 January 2013, she acquired title to the land. She has averred that she has been farming on the land since. On 26 October 2016, she sent a neighbour to check on the land and it is then it was found that a structure had been erected and was being occupied by the 2nd defendant. Further inquiry revealed that the 2nd defendant is son to the 1st defendant who was claiming ownership of the land. The plaintiff reported the matter to Kongoni Police Station and investigations revealed that the 1st defendant had an allotment letter for the same land issued in the year 1984 but he never paid the money required in the said letter so as to be issued with title. The defendants were asked to move out but they have refused. It is that which prompted the plaintiff to file suit. In the suit, the plaintiff seeks a declaration that she is the rightful proprietor of the suit land and an order of permanent injunction against the defendants.

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

3. Despite being served, the defendants have neither entered appearance nor filed any reply to this application. The only material that I have is therefore that supplied by the plaintiff.

4. In her supporting affidavit, the plaintiff has annexed a letter of offer for the suit land issued by the Director of Land Adjudication and Settlement. The letter required the plaintiff to pay the sum of Kshs. 32,387/= for the land. There is an annexed receipt showing payment of Kshs. 33,000/=. There is also annexed a transfer of the land from the Settlement Fund Trustees to the plaintiff and a title deed issued in

favour of the plaintiff on 16 January 2013.

5. To me, the above documents demonstrate, prima facie, that the plaintiff is the rightful owner of the suit land. As I earlier mentioned, the defendants have not filed anything to demonstrate that they have any right to be on this land.

6. I have no reason to deny the plaintiff the injunction that she has sought against the defendants. I allow this application and order the defendants not to enter, be upon, reside in, use, deal, or in any other way interfere with the land parcel Naivasha/Moi Ndabi/452 pending hearing and determination of this case. If the defendants are in possession, they must cede that possession and stop residing on the suit land until this case is heard and determined. The plaintiff shall also have the costs of this case.

7. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 25<sup>th</sup> day of May 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of:**

Mr. Maina holding brief for Mr. Ikua for the plaintiff/applicant

Mr. Kanyi Ngure holding brief for Mr. Wairegi for the defendants/respondents

Court Assistant :Nelima

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**