



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO. 155 OF 2015**

**WILSON NDIRANGU .....PLAINTIFF**

**VERSUS**

**CHARLES SAMERI MUKURIA .....DEFENDANT**

**RULING**

***(Application for injunction; plaintiff claiming to be owner of suit land and stating that he was issued with title deed in the year 1985; suit alleging that the defendant entered the land in the year 2015; same land claimed by the defendant; defendant having been on the land for a considerable amount of time and having built a permanent residence; fair in the circumstances that status quo be maintained)***

1. This suit was commenced by way of a plaint that was filed on 5 June 2015. In his plaint, the plaintiff has pleaded that he was a member of Mai-Mahiu Kijabe Longonot Company Limited, a land buying company and that he was issued with a share certificate No. 3902. He has averred that by virtue of his shareholding, he was allocated the land parcel Kijabe/Kijabe Block 1/3757 (hereinafter referred to as "the suit land") and was issued with a title deed on 22 May 1985. He has pleaded that when he went to his land in the year 2015, he found the defendant in occupation of it and had developed a house. It is his view that the occupation of the defendant of the suit land is illegal. In the suit, the plaintiff has sought a declaration that he is the lawful proprietor of the suit land; an order of permanent injunction against the defendant; a mandatory injunction and orders of eviction.

2. Alongside the plaint, the plaintiff filed an application for injunction which application is the subject of this ruling. He has essentially asked the court to issue an order restraining the defendant from being in possession of the suit land pending hearing and determination of this suit. In his supporting affidavit, the plaintiff has annexed a copy of his title deed and green card to demonstrate that he is the proprietor of the suit land.

3. The respondent has opposed the application by swearing a replying affidavit and another affidavit sworn by one George Ruiru Gitau. He has deposed that he is the lawful proprietor of the suit land having purchased it on 20 July 2010 from the said George Ruiru Gitau (Gitau). He has contended that it is Gitau who was the original allottee of the suit land having held share certificate number 3921. He has averred that this share comprised of 5 acres and he balloted for the plot No. 2786. He bought 2.5 acres of this land. He has deposed that Gitau had a dispute with another person named as Zakayo Kiboro Wainaina (Zakayo) for the remainder of the 2.5 acres.

4. In his affidavit, Gitau has deposed that his father was a director of the land buying company and that he purchased for him one share. He balloted for the plot No. 2786. In the year 2008, he discovered that

Zakayo had unlawfully subdivided his land into two plots and registered one in his name. He lodged a complaint over this. In the meantime, he sold the other half portion to the defendant vide the sale agreement of 20 July 2010. He has deposed that the suit land and the parcel No. 2786 together form the 5 acres which were allocated to him. He has also deposed that the plaintiff caused the defendant to be charged with the offence of Forcible Detainer in the Chief Magistrate's Court at Naivasha, Criminal Case No. 722 of 2015 the charge sheet of which he annexed. He has stated that while giving evidence, there were discrepancies in the testimony of the plaintiff.

5. The plaintiff swore a supplementary affidavit vide which he deposed that the averment that the land was bought for George Ruiru in the year 1987 is misleading since the land was allocated to members in the year 1984. He has also pointed out that the search certificate of the land registered in the name of Zakayo shows that Zakayo is deceased. He has refuted that the land parcel No. 2786 and the suit land were one and has contended that they are distinct.

6. I have considered the matter alongside the submissions of Mr. Kahiga for the plaintiff. Apart from the affidavits filed, I have also taken note of a survey report filed as part of the documents of the plaintiff. I have seen that the plaintiff appears to have title to the suit land. The suit land measures 2.5 acres. It does appear that the defendant purchased a certain piece of land also measuring 2.5 acres from one George Ruiru. The sale agreement identifies it as land parcel No. 3757 which is the same number to which the plaintiff holds title. There is an argument raised that the parcel No. 3757 was illegally hived off the plot number 2786.

7. I cannot tell at this stage of the proceedings whether or not the argument of the defendant is valid or not. It does however appear that the defendant has been resident on the suit land for a considerable duration of time. I have seen from the survey report that he has built a permanent house and has a mature orchard. The plaintiff has not explained where he has been all this time that the defendant has been on the suit land. An injunction has its roots in equity and it is a maxim of equity that one must not be guilty of laches. I think the plaintiff has been lax in pursuing this matter.

8. In the circumstances of this case, it is my view that it is best that the current status quo be maintained pending hearing and determination of this suit. I therefore make an order that the current status quo be maintained. I further order that no party should sell, lease, charge or enter into any other dispositions over the suit land. In addition, no party should make any further developments on the suit land. So as to preserve the title, I order that an order of inhibition be registered in the register of the land parcel Kijabe/Kijabe Block 1/3757 until this suit is heard and determined.

9. I have also noted that there is a criminal case facing the defendant, which is Naivasha Chief Magistrate's Criminal Case No. 722 of 2015, R vs Charles Sameri Mukuria (Police File No. 764/262/2015). It is a case of Forcible Detainer. I do not know the position of that case but if it is not completed, and so as to avoid a conflict of decisions, it is only fair that the proceedings be suspended until this case is finalized. There is a dispute on ownership of the suit land and this court will determine that issue with finality. I therefore order that further proceedings in the case Naivasha Chief Magistrate's Criminal Case No. 722 of 2015 be stayed until this court renders a decision in the matter. This order be served upon the Chief Magistrate's Court in Naivasha.

10. The costs of this application will be costs in the cause.

11. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 17<sup>th</sup> day of May 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of:**