



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
CASE NO.34 OF 2017

STEPHEN KIPKEMOI NGENOH-----PLAINTIFF

VERSUS

JOEL KORIR-----1ST DEFENDANT

GEORGE MONARE-----2ND DEFENDANT

KIPLELGOT BII-----3RD DEFENDANT

RULING

(An application for interim injunction; plaintiff alleging that the defendants have erected temporary structures at the entrance to or access to his land; despite service the defendants did not oppose the application; application allowed)

1. This ruling is in respect of plaintiff's Notice of Motion dated 7th February 2017, the prayers sought in the application are:-

a. Spent

b. THAT the Officer Commanding Molo Police Station be directed to ensure compliance with the Orders of this Honourable Court.

c. THAT pending the hearing and determination of this suit, the honourable court be pleased to issue a temporary injunction restraining the defendants herein whether by themselves, their agents and/or servants from blocking access to and/or constructing temporary structures on L.R. Number Kamara/Mau Summit Block 4/128 (Boror "B") comprising approximately 0.3760 Hectares within Mau Summit and currently occupied by the plaintiff.

d. THAT cost of this application be in the cause.

2. The application is supported by the affidavit of the plaintiff sworn on 7th February 2017.

3. When the application came up for hearing on 20th April 2017 there was evidence that the defendants had been served with the application. The defendants did not file any response to the application. The application was therefore heard unopposed.

4. The plaintiff deposed that he is the registered proprietor of all that land known as Kamara/Mau Summit

Block 4/128 (Boror “B”). He exhibited a copy of the title deed and a copy of certificate of search as at 5th December 2016 as proof of ownership.

The plaintiff accuses the defendants of erecting temporary structures at the entrance to or access to the suit property. He fears that the defendants intend to occupy and lay claim to his land. As proof the defendants’ offending activities, the plaintiff exhibited a memo from the County Surveyor, Nakuru County, dated 22nd August 2016 in which the County Surveyor notes the existence of the temporary structures. Prior to the filing of this suit, the plaintiff issued a demand letter dated 10th September 2016 to the defendants urging them to stop the interference but the defendants have not complied. The plaintiff therefore urges the court to grant the injunction sought.

5. At the hearing of the application counsel for the plaintiff relied entirely on the application and supporting affidavit and urged the court to allow the application. Counsel did not make any additional submissions.

6. I have considered the application, the supporting affidavits and submissions. From the annexed title deed and the certificate of search, it is clear that the plaintiff is the registered proprietor of Kamara/Mau Summit Block 4/128 (Boror ‘B’).

Further, I am persuaded that the defendants have erected temporary structures at the entrance or access to the plaintiff’s aforesaid land. Indeed, the memo from Nakuru County Surveyor dated 22nd August 2016 confirms that some temporary structures have been erected as deposed by the plaintiff. Even though the defendants have not been specifically mentioned in the memo, I note that a demand letter dated 10th September 2016 was issued to the defendants but they did not respond to it or stop the interference. I also note that the defendants did not respond to the present application. In the circumstances, the plaintiff’s claim is unchallenged and I find on a balance of probabilities that the plaintiff has established a *prima facie* case. Damages cannot adequately compensate the plaintiff since denial of access to his property is not something that can be quantified easily.

7. In the end, I order that pending the hearing and determination of this suit, an injunction is granted restraining the defendants whether by themselves, their agents and or servants from blocking access to and or constructing temporary structures on L.R. Number Kamara/Mau Summit Block 4/128 (Boror “B”).

8. Costs to the plaintiff.

Dated, Signed and delivered in open court at Nakuru this 12th day of May, 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Morintat H/B for Mr Otieno for the plaintiff/applicant

No appearance for the defendants/respondents

Court Assistant: Gichaba