



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO. 245 OF 2017**

**PATRICK NG'ANG'A KIARIE.....PLAINTIFF**

**VERSUS**

**MICHAEL KAMAU MWANGI .....1<sup>ST</sup> DEFENDANT**

**COUNTY GOVERNMENT OF NAKURU .....2<sup>ND</sup> DEFENDANT**

**RULING**

***(Application for injunction; plaintiff showing that he is the allottee of certain property; respondent interfering with the property; no reply by the respondent to justify his actions; prima facie case established; application allowed)***

1. This suit was commenced by way of a plaint that was filed on 12 June 2017. Together with the plaint, the plaintiff filed an application for injunction seeking to restrain the 1st defendant from the land described as Light Industry Plot No. 30 at Bahati Trading Centre, which is the subject matter of this case. It is the plaintiff's case that he is the legal owner of the suit land. He has averred that in the Daily Nation newspaper of 1 September 2009, the County Council of Nakuru, advertised that it would repossess certain plots within Nakuru. After this notice, he applied to be allocated a plot and the County Council of Nakuru, through a meeting held on 15 December 2009, did allocate to him the suit land. Before repossession, the land was in the name of Elijah Mwangi who is now deceased. The plaintiff has averred that the 1st defendant, who is the son of Elijah Mwangi, has been entering the suit land claiming that the same belongs to his late father. In this suit, the plaintiff wants the 1st defendant permanently restrained from the suit property. In his application for injunction, which is the subject of this ruling, the plaintiff wants the 1st defendant restrained from the suit property pending the hearing and determination of this case.

2. Despite being served, the 1st defendant has so far not entered appearance and has filed nothing to oppose the motion.

3. I have considered the application. I have seen the publication in the Daily Nation of 1 September 2009 through which the County Council of Nakuru gave a notice of repossession of certain plots. I have seen a letter dated 30 July 2012 from the County Council of Nakuru vide which the County Council allotted the suit land to the plaintiff. It therefore does appear, from the material before me, that it is the plaintiff who is the proprietor of the suit land. The 1st defendant has not tabled any material before me to demonstrate that he has rights over the suit land.

4. I am of the view that the plaintiff has demonstrated a prima facie with a probability of success. If the order of injunction is not issued, the 1st defendant may continue with his acts of trespass which may occasion the plaintiff irreparable loss. I therefore allow this application for injunction. I order the 1st defendant and/or his servants/agents not to enter, be upon, utilize or in any other way, interfere with the plaintiff's possession and occupation of the suit property until this case is heard and determined.

5. The plaintiff shall also have the costs of this application as against the 1st defendant.

6. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 30<sup>th</sup> day of June 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of :**

No appearance on the part of M/s Mongeri & Co. Advocates for the plaintiff/applicant

No appearance on the part of 1<sup>st</sup> and 2<sup>nd</sup> defendants/respondents.

Court Assistant :Nelima

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**