



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC SUIT NO. 695 OF 2013**

**VERONICA NJERI MWANGI.....PLAINTIFF**

**VERSUS**

**CATHERINE KIMANI.....1<sup>ST</sup> DEFENDANT**

**PETER ONCHIEKU.....2<sup>ND</sup> DEFENDANT**

**RULING**

The dispute between the parties revolves around the parcels of land which are said to have been purchased from an entity known as Hurlingham Squatters Development (hereinafter “HSD”) in the year 2007 and the year 2012. The plaintiff has contended that between 21<sup>st</sup> January 2007 and 17<sup>th</sup> March 2007, he purchased from HSD two parcels of land known as Plot No.492 B and Plot No. 493 B and an additional un-surveyed “V? shaped portion of land adjoining Plot No. 493 B all situated at Chokaa, Njiru, Kangundo Road, Nairobi (hereinafter together referred to as “the suit properties?”). The plaintiff has contended that he had peaceful and quiet possession of the suit properties until the 2<sup>nd</sup> defendant encroached on the lower portion of the suit properties and started construction on the open space he had left in front of his perimeter fence and on the power line way leave. The plaintiff has contended that the 1<sup>st</sup> defendant on the other hand had encroached on the upper portion of the suit properties and started digging trenches in front of the plaintiff’s gate. The plaintiff averred that the defendants had conspired to evict him from the suit properties forcefully by blocking him from accessing the suit properties. The plaintiff sought a permanent injunction to restrain the defendants from accessing, developing, remaining on, having possession of, trespassing, or in any way interfering with the suit properties and, an order compelling them to demolish and remove all the structures they have built on the suit properties and the adjoining way leave.

Contemporaneous with the plaint, the plaintiff brought an application by way of Notice of Motion dated 13/6/2013. In the application, the plaintiff sought a temporary injunction restraining the defendants from accessing, remaining on, developing or in any way interfering with the suit properties pending the hearing and determination of the suit, an order that the defendants do preserve and maintain the plaintiff’s access to the suit properties pending the hearing and determination of this suit and that, the defendants be compelled to demolish the structures they have erected on the suit properties at their own cost. The application which was supported by the plaintiff’s affidavit sworn on 13/6/2013 was brought on the same grounds set out in the plaint which I have highlighted above.

The plaintiff withdrew the suit against the 1<sup>st</sup> defendant on 3/8/2016. The 2<sup>nd</sup> defendant filed a replying affidavit and statement of defence on 10/7/2013. In his replying affidavit, the 2<sup>nd</sup> defendant averred that he purchased the parcels of land namely, Plot No. 1195 B and Plot No. 1109 from HSD on 5/2/2012 at a consideration of Kshs.300,000/-. The 2<sup>nd</sup> defendant denied that he had trespassed on the suit properties as claimed by the plaintiff. The 2<sup>nd</sup> defendant contended that it was the plaintiff who had erected a perimeter wall on his parcel of land known as Plot 1195 B and that the plaintiff had curved out a portion of that parcel of land measuring 15 feet for herself. The 2<sup>nd</sup> defendant averred that the dispute between him and the plaintiff was referred to HSD and HSD had made a finding that it was the plaintiff who had encroached onto Plot No. 1195 B owned by the 2<sup>nd</sup> defendant by 15 feet. The 2<sup>nd</sup> defendant averred that

the plaintiff was advised to pull down her offensive wall and to relocate her gate. The 2<sup>nd</sup> defendant contended that the documents annexed to the plaintiff's affidavit show that the plaintiff had encroached on his Plot No. 1195 B and erected thereon a wall and a gate. The 2<sup>nd</sup> defendant contended that it was the plaintiff who was harassing him. The 2<sup>nd</sup> defendant accused the plaintiff of failing to disclose to the court all material facts and for approaching the court with uncleanhands. The 2<sup>nd</sup> Defendant urged the court to dismiss the Plaintiff's application.

The plaintiff's application was argued by way of written submissions. The plaintiff filed her submissions on 25/9/2013 while the 2<sup>nd</sup> defendant filed his submissions on 15/10/2013. I have considered the plaintiff's application together with the affidavit filed in support thereof. I have also considered the replying affidavit which was filed by the 2<sup>nd</sup> defendant in opposition to the application. Finally, I have considered the submissions by the parties. From the material before me the Plaintiff and the 2<sup>nd</sup> Defendant seem to have purchased their respective parcels of land from HSD. The plaintiff and the 2<sup>nd</sup> defendant have both exhibited certificates of ownership which were issued to them by HSD in respect of the parcels of land which they claim to be owning. The dispute between the parties seems to concern the boundaries between the plaintiff's parcels of land and the 2<sup>nd</sup> defendant's parcel of land known as Plot No. 1195 B. On the material presented to the court, it is not possible for the court to determine the boundaries of the suit properties and the 2<sup>nd</sup> defendant's Plot No. 1195 B. This issue can only be determined at the trial. I am of the view that this is one of those cases in which the parties should maintain the status quo and have the suit set down for hearing.

Due to foregoing, I decline to grant any of the prayers sought in the Notice of Motion dated 13/6/2013. In place thereof, I order that pending the hearing and determination of this suit, the status quo prevailing as of the date hereof relating to access, title, use, possession or occupation of all those parcels of land known as Plot No. 492 B and Plot No. 493 B owned by the plaintiff and Plot No. 1195 B owned by the 2<sup>nd</sup> defendant shall be maintained. For the avoidance of doubt, the plaintiff's access to Plot No. 492 B and Plot No. 493 B shall not be blocked. The costs of the application shall be in the cause.

**DELIVERED and SIGNED at NAIROBI this 27<sup>th</sup> day of June, 2017.**

**OKONG'O**

**JUDGE**

**Ruling read in open court in the presence of:**

N/A for the Plaintiff

N/A for the 1<sup>st</sup> Defendant

N/A for the 2<sup>nd</sup> Defendant

N/A Court Assistant