



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO.313 OF 2016**

**MARGARET WANJIRU WACHIRA .....PLAINTIFF**

**VERSUS**

**KIMANI NJAGUA .....DEFENDANT**

**RULING**

***(Application for injunction; plaintiff being owner of suit land and defendant interfering with it; defendant also claiming to have a title deed; apparent on the face of it that defendant's title deed is dubious; application for injunction allowed)***

1. This suit was commenced on 9 August 2016 by way of plaint. Simultaneously with the plaint, the plaintiff filed an application for injunction, seeking to have the defendant restrained from the land parcel Nakuru/Kapsita/617, which is the subject matter of this suit (hereinafter referred to as the suit land). The case of the plaintiff as disclosed in her plaint and affidavit in support of the application, is that she is the registered owner of the suit land and that she has been leasing the same to various people including the defendant. It is averred that in December 2015, the defendant claimed to be the owner of the suit land and asked all other tenants to stop their activities on the land. In the month of June 2016, the defendant started putting up a semi-permanent house which the plaintiff claims is without any colour of right. In the suit, the plaintiff wants the defendant to be permanently restrained from the suit land. In the application for injunction, the plaintiff wishes to have the defendant restrained from the suit land pending hearing and determination of this suit.
2. To the supporting affidavit, the plaintiff has annexed a copy of her title deed and a photograph showing the structure being erected by the defendant.
3. The defendant has opposed the motion by filing a replying affidavit. He has also filed a defence to the suit. He has contended that he is the rightful proprietor of the suit land and that he has been tilling the land since the year 1997 when he was allocated the same by the former President, Daniel arap Moi, and issued with a title deed. He has averred that there has never been an ownership dispute until now that the plaintiff has emerged to claim the land. He has denied ever being a tenant of the plaintiff. To support his position, he has annexed a copy of his title deed.
4. The plaintiff filed a supplementary affidavit wherein she pointed out that the title deed displayed by the defendant shows that it was never first issued to the plaintiff, but to one Ejidoh Gakuo Mutahi. She is of suspicion that the title deed is a forgery since it indicates that it was issued under the Land Registration Act, 2012, thus contradicting the defendant's allegation that his title deed was issued in the year 1997.

5. The defendant also filed a further replying affidavit wherein he asserted that he never acquired his title from Ejidoh Gakuo Mutahi, who he stated owns an adjacent parcel of land. He has also stated that the Identity Card number in the plaintiff's title does not tally with what is in her original identity card.

6. I have considered the respective positions of the parties alongside the submissions made by Mr. Rubua Ngure for the plaintiff and the defendant who appeared in person.

7. It is the position of the plaintiff that she is owner of the suit land and she has displayed her title deed. The defendant also asserts to be the owner of the suit land and he has similarly displayed a title deed. I have serious doubts as to the authenticity of the title deed held by the defendant. The title deed shows that it was issued to the defendant on 16 July 1997 yet the heading of it shows that it was made pursuant to the provisions of the Land Registration Act, Act No. 3 of 2012. Now, as at 1997 when the title deed is said to have been prepared, the Land Registration Act, was not in existence. It indeed came into being in the year 2012. I am unable to comprehend how a document signed on 16 July 1997, would state that it is issued under a statute of 2012. That aside, the defendant argued that he was issued with the title deed by retired President Moi. That would mean that he was a first proprietor. However, what he has displayed shows that the first proprietor was one Ejido Gakuo Mutahi who purportedly became registered as proprietor on 16 July 1997. Again on the same day, the defendant and one Isaac Kamau became proprietors. Clearly, the defendant has contradicted himself by saying that he was first proprietor, and unveiling a purported title deed which shows that the first proprietor is one Ejido Gakuo Mutahi.

8. I have no reason to discredit the title deed shown to me by the plaintiff. The defendant has raised an issue that the identity card in her title deed is different from what she holds but I have seen no proof of this since the plaintiff's identity card has not been exhibited anywhere.

9. I am of the view that the plaintiff has demonstrated a prima facie case with a probability of success. She stands to suffer irreparably if the defendant is to continue constructing structures or being in possession of the suit land. I am not in doubt and need not consider the balance of convenience.

10. I allow this application for injunction. Pending the hearing and determination of this suit, I order the defendant and/or his servants/agents/assigns, not to enter, be upon, erect any structure, or in any other way interfere with the plaintiff's possession of the land parcel Nakuru/Kapsita/617. The plaintiff shall also have the costs of this application.

11. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 22<sup>nd</sup> day of June 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of: -**

Ms. Gikonyo holding brief for Mr. Rubua Ngure for the plaintiff/applicant

Defendant/Respondent present, acting in person

Court Assistant : Nelima

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**