



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO.86 OF 2016

ISAIAH MWAURA NDOHO.....PLAINTIFF

VERSUS

JULIUS MONARI ORORI.....DEFENDANT

RULING

1. The Plaintiff/Applicant filed a suit against the Defendant/Respondent in which he sought injunctive orders against the respondent over a property described as plot No. 015PL, North Region Jua Kali Association. The applicant contemporaneously filed a notice of motion dated 2nd February 2016 in which he seeks a temporary injunction restraining the respondent from interfering with Plot No. 015PL, North Region Jua Kali Association (Suit land).
2. The applicant states that he bought the suit land from one Carolyn Walunya were on 6th August 2011. Carolyn Walunya Were was the allottee of the suit land. Carolyn Walunya Were took him to the offices of Nairobi North Region Jua Kali Association where ownership changed. He was issued with a certificate of ownership.
3. The applicant took possession and deposited building materials on the suit land. On 22nd February 2014, he went to the suit land to commence construction only to find that the respondent had started constructing a house on the suit land using his materials. He reported the incident to Mowlem Police Post. The respondent was asked to stop construction but he did not stop. The respondent continued construction day and night prompting the applicant to file the present application.
4. The respondent has opposed the applicant's application based on a replying affidavit sworn on 24th February 2016. The respondent contends that the suit land belongs to him. He purchased the suit land on 2nd December 2003 from Nicholas Juma Kamunyu. He took possession and later fenced the suit land and commenced constructing a house on it. Due to lack of money, he stopped constructing the house. When he was transferred from Nairobi he asked his neighbour to keep an eye over the suit land.
5. Whenever he got money, he proceeded with construction. Sometime in the year 2014, he was informed that someone had deposited building materials outside the suit land. He came back to Nairobi and inquired as to the person who deposited the building materials. He found out that it was the applicant. The applicant removed the materials only to come back on 24th January 2016 with hired goons who broke the gate and gained access and started constructing the house he had already started. The incident was reported to Mowlem Police Post who advised the applicant to stop interfering with the suit land.

6. The respondent contends that he has since completed the house which he had started and that it is now occupied. The respondent further contends that the applicant has never taken possession of the suit land.

7. I have carefully considered the applicant's application as well as the opposition thereto by the respondent. I have also considered the submissions by both parties. The purpose of a temporary injunction is to prevent the occurrence of an event that has not occurred. It is never granted to prevent that which has already occurred. In the case of **Jane Kemunto Mayaka –Vs- Municipal Council of Nakuru & others HCCC No. 124 of 2005**, it was held as follows:-

“injunctions are issued to prevent the occurrence of an event that has not occurred or that is threatened to occur that would likely injure an applicant and are not issued where such an event has taken place.”

8. In the instant case, the respondent has already constructed and completed a house on the suit land. In the circumstances no injunction can be given. The applicant and the respondent both claim to have bought the suit land from different people at different times. They both have certificate of ownership issued by the same entity which was responsible for allocation of the plots in the area. It is not possible for the court to determine who *prima facie* is the owner of the land. This has to wait until the case is fully heard and a determination as to the lawful owner is made. It has been held that where there are serious conflicts as to ownership of a property, the most appropriate order to be given is an order for maintenance of the *status quo* until the dispute is solved. See the **Court of Appeal decision in Ougo & another –Vs- Otieno (1987) KLR**.

9. From the facts of this case, it is the defendant who is in possession. I therefore make an order that the status quo should be maintained. For avoidance of doubt, the *status quo* is that it is the respondent who is in possession. A further order is made that both the applicant and the respondent should not sell or do anything which will take away the suit land and vest it in third parties until the hearing and determination of this case. The costs of this application shall be costs in the cause.

It is so ordered.

Dated, Signed and delivered at Nairobi on this **19th** day of **June**, 2017.

E.O. OBAGA

JUDGE

In the absence of parties who were aware of the time and date of delivery of ruling

Court Assistant - Hilda