



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 53 OF 2017

LUCIA JEPKEMOI CHEPTIM ..... PLAINTIFF

VERSUS

RICHARD CHESIMET ..... DEFENDANT

**RULING**

***(An application for injunction to restrain the defendant from trespassing on or interfering with plaintiff's quiet possession of suit property; application unopposed; prima facie case established; application allowed)***

1. This ruling is in respect of plaintiff's Notice of Motion dated 14<sup>th</sup> February 2017. The application is brought under Order 40 Rules 1, 2 and 3 of the Civil Procedure Rules and is supported by an affidavit sworn by the plaintiff on 30<sup>th</sup> January 2017. The application seeks the following orders:

1. *(Spent).*

2. *(Spent).*

3. *THAT, this honorable court be pleased restrain the defendant from developing, erecting, or trespassing or in any way interfering with the quiet possession of the suit property pending the hearing and determination of this suit.*

4. *THAT, the costs of this application be provided for.*

2. The plaintiff deposes in the supporting affidavit that she was allocated Commercial Plot No. 108 at Tarakwa 'A' pursuant to a letter from County Council of Nakuru and that she has been paying rates in respect thereof to County Council of Nakuru and to County Government of Nakuru. She accuses the defendant of constructing semi-permanent structures on the plot and failing to remove the structures despite demands to do so. She therefore prays for the injunction as sought in the application.

3. Though the hearing date for the application was taken in court in the presence of advocates for the defendant, the defendant did not file any response to the application. Further, counsel for the defendant did not attend court on the date the application was to be heard inter parte. Consequently, the application proceeded unopposed.

4. I have considered the application and the submissions of counsel. There is uncontroverted evidence on record that the plaintiff was allocated the suit property known as Commercial Plot No. 108 at Tarakwa 'A' and that she has been paying rates in respect thereof. There is also undisputed evidence that the

defendant has constructed a semi-permanent structure on the plot. In the circumstances, I am persuaded that the plaintiff has established a prima facie case with a probability of success. I note that the plaintiff did not state the details of the suit property at prayer 3 of the application. Nevertheless, there is no dispute that the suit property is Commercial Plot No. 108 at Tarakwa 'A'.

5. In the circumstances, I grant an injunction restraining the defendant from developing, erecting any structures or trespassing upon or in any way interfering with the plaintiff's quiet possession of Commercial Plot No. 108 at Tarakwa 'A' for a period of one year from date of delivery of this ruling. The validity of the injunction is limited in time to ensure that the plaintiff prosecutes the main suit without delay. Costs to the plaintiff.

Dated, signed and delivered in open court at Nakuru this 15<sup>th</sup> day of June 2017.

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr. Chege holding brief for Mr. Gakinya for the plaintiff

No appearance for the defendant

Court Assistant: Gichaba