



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC. CASE NO. 1202 OF 2016**

**SILVESTER KIBOCHA WANG'OMBE..... PLAINTIFF**

**VERSUS**

**TIMOTHY THUKU MUCHIRI.....DEFENDANT**

**RULING**

The Plaintiff seeks an order of injunction to restrain the Defendant from trespassing, building or constructing on, selling, disposing of, transferring or in any manner interfering with the property known as Plot No. 850- Kamae Re-settlement Project Phase 2 (“the Suit Property”) pending hearing and determination of the suit. He also seeks an order of eviction against the Defendant to be supervised by the OCS Kasarani Police Station and an order directing the Defendant to demolish the illegal structures built on the Suit Property. His application dated 3<sup>rd</sup> October 2016 was filed contemporaneously with the suit. The court certified it urgent on 4<sup>th</sup> October 2016 but did not grant interim orders.

The orders for eviction of the Defendant and demolition of his buildings on the Suit Property cannot be granted at the interlocutory stage. The court will now consider whether the Defendant should be restrained as the Plaintiff urges.

The Plaintiff claims he bought the Suit Property from Samuel Chege on 22<sup>nd</sup> September 2011 and was issued with an ownership certificate for the Suit Property on 23<sup>rd</sup> September 2011. He also got a letter from the Chairman of Kamae Re-settlement Project confirming that he is the registered owner of the Suit Property. The Plaintiff had filed **Kiambu CMCCC No. 207 of 2016** over the same Suit Property but withdrew it when the Defendant raised issues of jurisdiction. He then filed this suit.

The Defendant filed his replying Affidavit in which he also claims to be the owner of the Suit Property having bought it from Mary Wamaitha, mother of the late Peter Mwangi who was allocated the Suit Property. The Defendant exhibited a certificate of ownership issued by Kamae Re-settlement Project Phase 2 dated 16<sup>th</sup> July 2004. He has produced a copy of the letter of allotment dated 29<sup>th</sup> July 2002 issued to Peter Mwangi together with a copy of the death certificate showing Peter Mwangi died on 27<sup>th</sup> January 2003. The Defendant annexed photographs showing he has erected rental dwelling houses on the Suit Property. He urges the court to instead set down the case for hearing. The Plaintiff has taken up the issue of there being no grant of letters of administration to authorise the sale of the Suit Property to the Defendant.

The court notes that no title has been issued over the Suit Property. Both parties rely on certificates of ownership which were issued by Kamae Re-settlement Project to both the Plaintiff and the Defendant.

At this stage, it is difficult to tell who of the parties herein has better title to the Suit Property. It is only at the trial when the officials of Kamae Re-settlement Project Phase 2 who issued the two ownership certificates over the same plot can shed light on this issue.

Since the Defendant has already erected dwelling houses on the Suit Property, the court cannot restrain him from building or trespassing on the land. The court however issues an order enjoining the Defendant not to sell, dispose of, transfer or otherwise part with possession of the Suit Property until the suit is heard and determined. Each party will bear its costs.

Dated and delivered at Nairobi this 13<sup>th</sup> day of July 2017.

**K. BOR**

**JUDGE**

In the presence of: -

Mwaura for the Plaintiff

No appearance for the Defendant

Mr. V. Owuor- Court Assistant