



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 135 OF 2017**

**FREDRICK MATU MAGONDU..... PLAINTIFF**

**VERSUS**

**GERALD T. KANYING.....DEFENDANT**

**RULING**

The Plaintiff filed this suit on 24<sup>th</sup> February 2017 seeking a permanent injunction to restrain the Defendant from trespassing or interfering with the Plaintiff's parcel of land being L.R. No. Nairobi/Block 110/397 situated in Thome Estate, Nairobi ("the Suit Property"). He also filed the application dated 24<sup>th</sup> February 2017 seeking an injunction to restrain the Defendant from entering, trespassing or in any way interfering with the Suit Property.

The Plaintiff bought the Suit Property in 1991 and was issued a title deed over the Suit Property on 16<sup>th</sup> April 1992. He claims that the Defendant has without any colour of right trespassed on part of the Suit Property and forcibly occupied it and that if the orders he seeks are not granted he stands to suffer irreparable loss and damage. The Plaintiff swore the affidavit in support of the application and a supplementary affidavit.

The Defendant filed his defence and counterclaim in which he maintains that he is the legitimate owner of half share of the Suit Property which he bought from the Plaintiff and that he has been in occupation of this portion of the Suit Property since September 1996. The Defendant filed a Replying Affidavit and a further affidavit in opposition to the application for injunctive relief.

The Defendant has annexed documents showing that he entered into a transaction with the Plaintiff over the Suit Property and that he made payments to the Plaintiff through the firm of Nyaencha Waichari & Company Advocates in respect of the Suit Property. He has also attached a copy of the transfer of land over the Suit Property which indicates that the Plaintiff was transferring the Suit Property to himself and the Defendant. The transfer of land bears several stamps from the lands office as well as the Collector of Stamp Duties dated 13.9.2013, 25.9.2013 and 11.08.2015. It has both the Plaintiff's photographs and the Defendant's photo and appears to have been executed by the Plaintiff and Defendant.

The Defendant has also produced copies of a draft memorandum and articles of association in respect of Excel Ventures Limited which was being incorporated by the Plaintiff, Defendant and their respective spouses in 1996. The Suit Property was to be transferred to this company.

This being an interlocutory application, the court is only required to inquire whether the Plaintiff deserves the injunctive relief he seeks against the Defendant. The Plaintiff has to establish a prima facie case and show that he will suffer irreparable harm if the orders are not granted.

The court is not satisfied that the Plaintiff has a prima facie case against the Defendant for the court to grant the orders the Plaintiff seeks. The application dated 24<sup>th</sup> February 2017 is dismissed with costs to the Defendant.

In the interest of justice and to preserve the Suit Property, both the Defendant and the Plaintiff will maintain the status quo until the case is heard and determined.

Parties are directed to go for pretrial conference within 21 days and thereafter set the matter down for hearing so that this dispute can be determined quickly.

**Dated and delivered at Nairobi this 11<sup>th</sup> day of July 2017.**

**K. BOR**

**JUDGE**

In the presence of: -

Ms. Wambugu holding brief for Mungai for the Plaintiff/Applicant

Moindi holding brief for Mogire for the Defendant/Respondent

Mr. V. Owuor- Court Assistant