



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 89 OF 2017

DAVID KABULU THANYAKU.....PLAINTIFF

VERSUS

JOSEPH NCUBIRI.....DEFENDANT

R U L I N G

1. The Notice of Motion dated 13 March, 2017 seeks the following orders that:

1) Spent.

2) That this Honourable Court be pleased to issue a temporarily order of injunction restraining the defendant/respondent, his agents, servants and/or employees, or whomsoever else, acting on the defendants/respondent's behalf or instruction from entering into, cultivating, utilizing, occupying trespassing or in any other manner whatsoever dealing with and or interfering with the plaintiff/applicants' ownership possession, occupation and use of land parcel No. TIGANIA/KITHARENE/2622 pending the inter-parties hearing and determination of this application and thereafter as the court shall so order.

3) That this Honourable Court be pleased to issue as order of injunction restraining the defendant/respondent his agents, servants and/or employees or whomsoever else acting on the defendant/respondents behalf or instructions from entering into , cultivating, utilizing, occupying , trespassing or in any other manner whatsoever dealing with and/or interfering with the Plaintiff/Applicant's ownership, possession occupation and use of land parcel No. TIGANIA /KITHARENE/2622 pending the hearing and determination of this suit.

4) That the cost of this application be costs in the cause.

2. The application is based on the grounds:-

a) That the Plaintiff /applicant is the bonafide and duly registered owner of that land parcel known or described as L.R. No. TIGANIA/KITHARENE/2622 and he is in possession of a title deed thereto.

b) That the defendant/respondent is in illegal retention and trespass upon the said land parcel and has prevented the plaintiff/applicant from entering actual occupation and use of the said land parcel.

c) That actions and activities of the defendant/respondent on the said land parcel are illegal and interfere and he ought to be restrained by way of an injunction.

3. The application is supported by the affidavit of David Kabulu Thanyaku sworn on 13th March, 2017 and has the following grounds:-

1) That he is the registered owner of that land parcel known and/or described as L.R. No. TIGANIA/KITHARENE/2622 and he is in possession of a title deed hereto issued to him on 12/01/2014.

2) That he is a bonafide purchaser for value having purchased the said land parcel from its previous owner, one NTIBUKA LARU ALIAS CIOMUBWIKA M'LAARU vide a sale agreement dated 11/04/2009.

3) That prior to the said purchase, he had confirmed that the said vendor was the actual owner of the said land parcel.

- 4) That upon purchase of the said land parcel the previous owner duly transferred possession and ownership thereof to him and he was duly registered as the owner of the said land parcel.
- 5) That the defendant/respondent has been in forcible and illegal retention of the Suitland which he has illegally been cultivating and has illegally prevented applicant from taking actual occupation and use thereof.
- 6) That the actions and activities of the defendant/respondent on the said land parcel are illegal and unlawful and applicant is suffering loss and damage.

4. It is quite apparent that applicant has rights of proprietorship over the suit land by virtue of registration and issuance of a title deed. It is also noted that no response was filed by defendant despite the fact that service was effected. I therefore find that the application is meritorious. I allow the same but for period of **one year**.

SIGNED, DELIVERED AND DATED IN OPEN COURT AT MERU THIS 21ST DAY OF SEPTEMBER, 2017 IN THE PRESENCE OF:

CA: Janet

HON. L.N. MBUGUA

JUDGE