



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 184 OF 2017

JOSHUA M'MWIREBUA KIRERUPLAINTIFF

VERSUS

KATHIARI MUNGANIADEFENDANT

R U L I N G

1. The Notice of Motion dated 15th day of June, 2017 seeks the following orders:-

1. Spent.

2. That this Court be pleased to issue an order of temporary injunction restraining the defendant, his agents, servants, employees, assigns. Legal representative or anybody claiming under his name be restrained from taking occupation, selling, leasing out, pouring building materials, developing or any in any other way interfering with suit plot within Mwangaza C3 belonging to the Plaintiff pending hearing and determination of application and the suit.

3. In the alternative status quo prevailing at time of filing case be maintained in that Plaintiff do remain in exclusive occupation of suit pending hearing and determination of application and the suit.

4. Costs of application.

2. The application is based on the grounds:-

1. That the applicant has been in exclusive and in uninterrupted occupation of suit plot for over 30 years.

2. The defendant has illegally and without permission of the plaintiff started permanent construction on the land in attempt to disposes the plaintiff of the suit plot.

3. That the plaintiff shall suffer irreparable loss if the respondent is not restrained.

4. The respondent is trying to process illegal registration of the plot.

3. The Applicant has also filed a Supporting Affidavit where he has deponed as follows:-

1. That he was the lawful owner of 3 plots measuring 50 by 100 feet within Mwangaza C3 within Isiolo Municipality within Isiolo County.

2. That the plots are unregistered although they have been waiting for registration only for County Government to suspend legitimate registration sometimes in 2013.
3. That he has been in continuous and un interrupted occupation of the plot for over 30 years.
4. That he has developed the plot whereof he has fenced with live fence and built semi-permanent houses thereon.
5. That the Applicant heard that the defendant had gone to Isiolo County Offices trying to seek secretly a registration of the said plot in his favour without applicant's knowledge or consent.
6. That registration at the said offices had been stopped and applicant learnt that the respondent was trying a back door attempt to acquire the plot.
7. That he had poured building materials thereon, poles, sand, and gravel building stones which the defendant herein is using to construct structures on Applicant's land.
8. That his son's Benard Mururu & Stephen Mwenda approached the defendant over the issue whereby he assaulted them causing severe injuries to the legs and head. The matter was reported at the Isiolo Police Station in OB No. 68/9/06/17.
9. That the action of respondent is totally to disposes him off the plot and he stands to suffer irreparable loss.
10. That the respondent is intending to put up permanent buildings on the plot and he should be restrained pending hearing and determination of the case.

4. The application was served but there is no response.

5. I have perused the application vis a vis the prayers in the Plaint. In the Application, the prayers are to have defendant restrained from occupying the land amongst other prayers.

However one of the main prayers in the plaint is an order of demolition and eviction of defendant and his agents from the suit land. It follows that defendant is on the land.

The orders sought for herein are therefore not in tandem with the pleadings of the applicant.

The orders which the Court grants at this stage are as follows:-

1. No further developments are to be carried out on the suit land.
2. No demolitions are to be carried out on the suit land.
3. Costs in the cause.

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

CA: Janet

In absence of all parties

HON. L.N. MBUGUA

ELC JUDGE