



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 447 OF 2016**

**KIPRONO ARAP JUMA.....1<sup>ST</sup> PLAINTIFF**

**LUCY KIRUMWA MUCHIRI.....2<sup>ND</sup> PLAINTIFF**

**TRUPHENA SIRISIA CHUMO.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**FREDRICK LEPEYO & 7 OTHERS.....DEFENDANTS**

**RULING**

***(Suit by plaintiffs claiming that defendants have interfered with their land; defendants pointing at a boundary dispute and a dispute over an alleged public utility land but not showing why they are entitled to interfere with the plaintiffs' land; prima facie case established; application for injunction allowed)***

1. This suit was commenced by way of plaint on 18 October 2016. In the plaint, the plaintiffs have pleaded that the first and second plaintiffs are the owners of the land parcels Nakuru/Kampi Ya Moto/32 and 31 respectively, while the 3rd plaintiff is the administrator of the estate of Kipleige arap Wogo (deceased) who is the registered owner of the land parcel Nakuru/Kampi Ya Moto/30. It is claimed that on 14 October 2016, the defendants forcefully trespassed into the bottom parts of the plaintiffs' said land parcels, hived off huge chunks, and planted fencing poles, claiming ownership of the same. The plaintiffs aver that the defendants are not even their neighbours and have no claim over the parcels of land. In the suit, the plaintiffs seek to have the defendants permanently restrained and evicted from the said land parcels.

2. Together with the suit, the plaintiffs filed an application for injunction seeking to have the defendants restrained from the suit properties until this case is heard and determined. It is that application which is the subject of this ruling. To the supporting affidavit, the plaintiffs have annexed a map of the area and have demonstrated the portion interfered with by the defendants. They have also annexed photographs showing the fencing posts placed by the defendants. Also annexed is a title deed owned by one Veronica Waturi Karikwa as owner of the land parcel No. 29.

3. The defendants filed a replying affidavit, sworn by Mr. Peter Chirchir, the 5th defendant/respondent. He has deposed that both plaintiffs and defendants are members of Kampi Ya Moto Settlement Scheme. He has not disputed that the 1st and 2nd plaintiffs respectively own the land parcels No. 32 and 31 but has averred that the 3rd plaintiff does not have title to the Plot No. 30 as the same is subject to Nakuru High Court Succession Cause No. 684 of 2015. He has wondered why the title deed to the land parcel No. 29 is annexed yet the same is not in issue in this case. He has deposed that the map annexed by the plaintiffs is one that is currently undergoing amendment and he has attached a copy of the proposed amendments. He has stated that there has been a long running boundary dispute between Kampi Ya Moto Settlement Scheme and two other persons, namely, Richard Kipchilat and Dr. Edward Sambili, and that the Nakuru County Government directed a survey of the area to determine the boundary between a land parcel LR No. 10978/14, which is said to be public land, and the land parcels Nakuru/Kampi Ya Moto/6 and 3. The County Surveyor then prepared his report, which he annexed, and a Registry Index Map (RIM). He has

pointed to the RIM and stated that a land parcel No. 21 is public utility land. He has further averred that every allottee of Kampi Ya Moto Settlement Scheme, in total 26 persons, are entitled to 5 acres each, but the problem is that the ground does not tally with the map. He has averred that at an appropriate time they will ask the court to order a comprehensive survey of the area for the matter to be put to rest. He has thought that the suit herein has been filed at the behest of Mr. Richard Kipchilat.

4. I have considered the matter alongside the submissions of Mr. Olonyi for the plaintiffs and Mr. Nyamwange for the defendants. The case of the plaintiffs is that the defendants have interfered with their parcels of land and have placed fencing posts on it. As far as the plaintiffs are concerned, the defendants have no right to do so. It is not very clear to me why the defendants have thought it fit to fence off parts of the parcels of land claimed by the plaintiffs. They have pointed at a conflict between the ground occupation and the map, and have also referred me to a long running boundary dispute between persons who are not parties in this suit. I have looked at the survey plan that they have annexed which bears LR Nos. 10978/2; LR No. 10978/3 ; LR No. 10978/6 and LR No. 10978/7. I really cannot tell the connection between these land parcels and the three properties claimed by the plaintiff and I am not very sure what point the defendants wished to put across by referring me to these land parcels. Nevertheless, what is most important to me, is that the defendants have not given me any reason as to why they have a right to interfere with the plaintiffs' land parcels which to me seem to be recognized by the RIM. If they feel that the plaintiffs have more land on the ground than they are entitled to, then that is an issue that they will have to put forth at the hearing of the main suit. They will indeed also have a chance to put across their views at a full hearing of the suit. It was also mentioned that the 3rd plaintiff does not own the land parcel No. 30, but it is not denied that she is currently the administrator of the estate of the deceased proprietor, and the fact that there are objection proceedings have not taken away her capacity. I do not know why the plaintiffs annexed the title to the land parcel No. 29 which is not in issue but I do not think that its annexure changes anything.

5. I think from the material before me, the plaintiffs have demonstrated a prima facie case with a probability of success. They will definitely suffer loss if the defendants continue with their actions of putting up fences and alienating parts of their land. I am therefore of the view that the plaintiffs are entitled to an injunction as against the defendants. I allow the application for injunction and order that the defendants are hereby stopped from entering, being upon, fencing, cultivating or in any other way interfering with the plaintiffs' use and quiet possession of the land parcels Nakuru/Kampi Ya Moto/ 30, 31 and 32, until this case is heard and determined. I also award the plaintiffs the costs of this application. The defendants will have to argue their case while outside the disputed properties.

6. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 31<sup>st</sup> day of October 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of : -**