



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO 168 OF 2017

JOHN MWENDA NGEER.....PLAINTIFF/APPLICANT

VERSUS

LYDIA ACICI M'THIKIA.....DEFENDANT/RESPONDENT

R U L I N G

1. The Notice of Motion dated 29th, May 2017 seeks the following orders:-

1) Spent.

2) That this Honourable Court be pleased to issue a temporary order of injunction restraining the Defendant/Respondent, her agents, assignees and/or relatives/servants or whomsoever else acting on the defendant/respondent, her agents, assignees and/or relatives/servants or whomsoever else acting on the defendant/respondent's behalf from entering into, invading, trespassing, encroaching or in any other manner whatsoever dealing and/or interfering with the plaintiff's ownership, occupation, possession and use of the plaintiff/applicant's land parcel No. 12173 KARAMA ADJUDICATION SECTION pending the hearing of this application inter-partes and thereafter, as the Court shall order.

3) That this Honourable Court be pleased to issue a temporary order of injunction restraining the defendant/respondent her agents, assignees and/or relatives or whosoever else acting on the defendant/ Respondent's behalf from entering into, invading, trespassing, encroaching or in any other manner whatsoever dealing and/or interfering with the plaintiff's ownership, occupation, possession and use of his land parcel No. 12173 KARAMA ADJUDICATION SECTION pending the hearing and determination of this suit.

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

2. The application is based on the grounds that:-

a) The Plaintiff herein is the lawfully registered owner of Land Parcel No. 12173 Karama Adjudication Section.

b) The defendant/respondent has illegally and unlawfully invaded, trespassed and /or encroached in to the Plaintiff/Applicant's Land Parcel aforesaid, whereupon she together with her agents and/or assignees have commenced putting up an illegal fence over the said Land parcel.

c) The defendant /Respondent is at the moment actively continuing with the illegal and forcible invasion on the plaintiff/Applicant's land parcel and the illegal fencing thereof.

d) The actions and activities of the defendant/respondent on the aforesaid land parcel are illegal and unlawful and it is necessary that urgent orders of injunction be issued therefrom.

e) This Application is made in utmost faith and the prayers being sought for, if granted will not in anyway, prejudice the defendant/respondent.

f) The nature, facts, events and circumstances of this case are in favour of granting of the orders being sought for vide this application.

3. The suit documents along with the application were served but respondent filed his Replying Affidavit in defiance of the Court orders of

31.05.17. The Court has therefore disregarded the said affidavit.

4. Applicant has filed a Supporting Affidavit where she has stated that defendant invaded her land on 07.04.17. Applicant had reported the matter at Muthara Police Station and hence defendant halted the acts of trespass. However, the invasion resumed on 24.07.17.

5. The document availed as "JMNI" indicates that applicant is the owner of the plot No. 12173 which is 0.20 acres. I find that the averment of the applicant have not been challenged in anyway.

The application of 25.05.17 is hereby allowed but the Injunctive Orders are to remain in force for a period of 8 months.

DELIVERED, SIGNED AND DATED IN OPEN COURT AT MERU THIS 11TH DAY OF OCTOBER, 2017 IN THE PRESENCE OF:

CA: Janet

Plaintiff Present

Defendant Present

Nyakwana h/b for Kaimba for Applicant

Hon. L.N. MBUGUA

ELC JUDGE