



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO. 261 OF 2017**

**JOHNSON KIPMUTAI CHERUIYOT.....PLAINTIFF**

**VERSUS**

**OLIVER KIPMUTAI.....DEFENDANT**

**RULING**

***(Application for injunction; plaintiff owning certain land and claiming that the defendant who is his neighbor has encroached into them; in his application for injunction plaintiff also suggesting that the boundaries be affixed by a surveyor; best to have the boundaries affixed; order that District Land Registrar and District Surveyor to establish the boundaries and file a report on the alleged encroachment)***

1. This suit was commenced by way of plaint filed on 27 June 2017. Together with the plaint, the plaintiff filed an application for injunction seeking to restrain the defendant from the suit properties, which are Nakuru/Nessuit Settlement Scheme/1998 and 1999, pending the hearing and determination of this case. It is that application for injunction which is the subject of this ruling. Despite being served, the defendant did not enter appearance and neither did he file anything to oppose the motion. He was also not present at the hearing of the application. It follows therefore that the only material that I have is that presented by the plaintiff.

2. This being an application for injunction, I stand guided by the principles laid down in the case of ***Giella vs Cassman Brown (1973) EA 358***. It was held in the said case that to succeed in an application for injunction, one needs to demonstrate a prima facie case with a probability of success; show that he/she stands to suffer irreparable loss unless the injunction is granted; and where the court is in doubt, it will decide the application on a balance of convenience.

3. The plaintiff's case is that he is the legal owner of the suit properties. He has averred that the defendant is his neighbor and that he has encroached into the suit properties and closed the plaintiff's access road. He has claimed that the defendant has been hostile to him claiming that the land belongs to the Ogiek community and not the plaintiff. It is alleged that in the year 2013, the defendant sent thugs to beat up the plaintiff leading to him suffering injuries. In his application and supporting affidavit, the plaintiff seems to suggest that the problem will be resolved if I am to send a surveyor and the boundaries of the parcels of land and the access road determined.

4. Having gone through the material of the plaintiff, and his proposal to have the boundaries picked, I think it is premature for me to issue any order of injunction against the defendant. In my view, the best order to make is to have the boundaries of the properties of the plaintiff confirmed and also it be verified

whether indeed there exists a road of access as claimed by the plaintiff.

5. I therefore make the following orders :-

*(i) That the District Land Surveyor and District Land Registrar, to proceed to the ground and establish or re-establish the boundaries of the land parcels Nakuru/Nessuit Settlement Scheme/1998 and 1999.*

*(ii) That the two officers to make a ground report and advise whether or not there has been any encroachment by the defendant, and if so, the extent and nature of such encroachment, into the land parcels Nakuru/Nessuit Settlement Scheme/1998 and 1999.*

*(iii) That this order be served forthwith by the plaintiff and the survey exercise be done and the report be filed within 30 days of service of this order.*

*(iv) That the plaintiff do shoulder the costs of the exercise be shouldered by the plaintiff.*

6. It is so ordered and directed.

**Dated, signed and delivered in open court at Nakuru this 4<sup>TH</sup> day of October 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of :-**

Ms. Wanuma for the plaintiff/applicant

No appearance on the part of the defendant/respondent

Court assistant: Toroitich Carlton

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**