



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO 137 OF 2014**

**STANLEY KIBORI MBOROKI.....PLAINTIFF**

**VERSUS**

**M'MAGIRI M'KAARIA.....1<sup>ST</sup> RESPONDENT**

**HENRY KABERE KATHUU.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

1. This application brought to Court by way of a Notice of Motion is dated 16<sup>th</sup> September, 2014 and seeks orders :-

1) Spent.

2) That pending the hearing of this application inter-partes this Honourable Court be pleased to issue an order of temporary injunction restraining the defendants either by themselves their servants and/or agents from evicting, entering, remaining on, building, cultivating and/or in anyway interfering with Suitland ABOTHUGUCHI/GAITU/ 1315.

3) That pending the hearing of this suit this Honourable Court do issues an order of temporary injunction restraining the defendants either by themselves, their servants and/or agents from evicting, entering, remaining on, building, cultivating and/or in any interfering with the Suitland ABOTHUGUCHI/GAITU/1315.

4) That the costs of this application be provided for.

2. The application is based on the grounds:-

a) That the Suitland was acquired by the plaintiff and he has occupied and used the same for over 20 years.

b) That in the event of any eviction from the said land the plaintiff and his family will be rendered destitute and landless, hence the need for the Court's Intervention.

c) That the plaintiff has developed the Suitland and has developments thereon besides crops, tree and other property thus stand to suffer irreparably if orders sought herein are not granted.

d) That it's only fair and in the interest of justice that this application is allowed as the case involves serious fraud.

3. In support of his application, Plaintiff has deponed that he bought a portion of 1<sup>st</sup> defendant's land No. Abothuguchi/Gaitu/ 356 in 1993-1994. The land was not subdivided. He identified a fertile arable portion. The land was later subdivided and he got a title deed No. Abothuguchi/Gaitu/313 in 1994. He then started to utilize the land and planted trees. However in 2014 (August) he learnt that on the ground, the land he has all along considered to be his actually belongs to 2<sup>nd</sup> defendant and that his own portion (Plaintiff's) is situated on a river bank, its sloppy and rocky. He also claims that 2<sup>nd</sup> defendant has now been threatening to evict him.

4. On his part, 1<sup>st</sup> Defendant claims that the portion of land he sold to Plaintiff is No. 1313 and not 1315. He further states he fell sick and this is the basis on which he allowed Plaintiff to be cultivating parcel 1315, but when applicant requested to purchase the land, 1<sup>st</sup> defendant declined. He claims this is the reason why Plaintiff filed suit. He further avers that no developments have been carried out on the land.

5. 2<sup>nd</sup> Defendant claims he bought parcel No. 1315 from 1<sup>st</sup> defendant when it was unoccupied and had no encumbrances.

6. The application was canvassed by way of Written Submission.

7. I have considered all the arguments raised herein along with the authorities.

It is not in dispute that Plaintiff is the registered owner of parcel No. Abothuguchi/Gaitu/ 1313. However the suit land dispute is No. 1315. It is not in dispute that this parcel is registered in the name of 2<sup>nd</sup> defendant. That is why one of the main prayers in the plaint is for the Rectification of the Register for Plaintiff to take parcel No. 1315 and 2<sup>nd</sup> Defendant to take 1313.

The two issues for determination are:-

1) Fraud

2) Occupation

### FRAUD

Though the matter is still being dealt with at the interlocutory stage and parties are expected to avail the full facts of the case during the trial, it is incumbent upon the Plaintiff to satisfy the Court that this application meets the threshold of the grant of an injunction. In Paragraph 12 of his affidavit, applicant claims that his neighbor the 2<sup>nd</sup> defendant had fraudulently taken his land. How did this happen? This is a case whereby Plaintiff got his title deed in 1994. 2<sup>nd</sup> Defendant (as per the Search Certificate availed by applicant) got his title on 05.08.14. Applicant has not substantiated his claim as to how 2<sup>nd</sup> defendant managed to cause the fraud 10 years after Plaintiff was issued with a title deed. To this end, I find that Applicant has not demonstrated that he has a prima facie case.

### POSSESSION

Having claimed that he has been on the land since 1994, then it was incumbent upon the applicant to show the nature and extent of his occupation. Does he live on this land? Has he raised a family on this land? Does he earn his living on this land (perhaps by having cash crops etc). The nature and extent of Plaintiff's alleged occupation on the land would have had a bearing on the criteria of irreparable injury as well as the balance of convenience. As the matter stands now, Plaintiff has not demonstrated that he stands to suffer irreparable injury and that he is the one who stands to be inconvenienced if the injunction is not granted.

The upshot of my findings are that the application for injunction is not meritorious. The same is dismissed with costs to defendants.

**DELIVERED, SIGNED AND DATED IN OPEN COURT AT MERU THIS 4<sup>TH</sup> DAY OF OCTOBER, 2017 IN THE PRESENCE OF:**

CA: Janet

Kithinji for 2<sup>nd</sup> Defendant present

Miss Rimita for Plaintiff present

Mutuma Mwenda h/b for Otieno C. for 1<sup>st</sup> Defendant present

**Hon. L.N. MBUGUA**

**ELC JUDGE**