



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 1301 OF 2016

JAMES GACHARI WANJOHI.....1ST PLAINTIFF

BRIAN MAKONGE WANJOHI.....2ND PLAINTIFF

=VERSUS=

HELLEN NJERI aka HELLEN WANGUI NJERI...1ST DEFENDANT

EMBAKASI RANCHING COMPANY LTD.....2ND DEFENDANT

RULING

1. The first Plaintiff/Applicant is father to the second Plaintiff/Applicant. The applicants filed a Notice of Motion dated 20th October 2016 in which they seek an injunction order restraining the respondents their agents and servants from *developing, constructing, selling, transferring, leasing, charging, damaging, encroaching or interfering* in any way with all those plots known as **plot P.3857** and **plot 3857 B** arising from Share Certificate **No. 0416**.

2. The first applicant contends that in or around 11th January 1991, he purchased plot No. P 3857 measuring $\frac{1}{4}$ of acre from one Nzomo Mulwa who was a shareholder in the second Respondent Company. The first applicant was duly entered in the records of the second Respondent after paying transfer fees. In 1997, the second respondent gave him a bonus plot being plot No. P 3857 B.

3. In the year 2012, the first applicant authorised the second applicant to put up a house on plot No. P 3857. The second applicant put a two roomed semi-permanent house where he resided with his wife and children. On 18th April 2016, the second applicant was summoned by a Police Officer from Ruai Police Station. On arrival, the second applicant was put in cells and informed that he was staying on someone's plot. He was asked to vacate immediately. The second applicant later received threats from a strange number. His reports to police never elicited any help. The second applicant was later forcefully evicted and his house demolished. The first respondent has since taken possession and has accumulated building materials on the plot.

4. The first respondent has opposed the applicant's application based on a replying affidavit sworn on 4th October 2016. The first respondent contends that the plots being claimed by the applicants actually belong to her and that they are plot Nos. N 38 and N 39 which she bought from Nyakinyua Mumbi Wanawake Society Kenya in the 1990's. She contends that she has nothing to do with the plot numbers being claimed by the applicants. That the applicants are known grabbers who are out to grab her plots.

5. I have gone through the documents availed by the applicants and the first respondent. Though the parties to this dispute are claiming to have bought parcels which have different numbers, they seem to be fighting over the same plots on the ground. The first respondent contends that she bought her two plots in the 1990's but documents produced by her show that she was taken to the site in April 2016. The applicants on the other hand contend that they have been in possession of the two parcels since 1991 and 1997 for parcels No. P 3857 and P 3857 B respectively.

6. The second respondent who are the custodians of records for all plots have chosen not to say anything regarding the dispute, though they have been sued as defendants. This is a serious matter where two different parties are claiming the same land on the ground but are citing different parcels numbers. It is not for this Court to say at the moment who has produced genuine documents or not. This is a matter for full trial. As there are serious conflicts of facts and given the fact that already, the second applicant has been evicted from the suit property, the proper action to be taken is to order that the *status quo* be maintained until this matter is heard in a trial. See Ougo & another Vs Otieno (1987) KLR 364 at 365 where the Court of Appeal held that the general Principle is that where there are serious conflicts of facts, the trial Court should maintain *status quo* until the dispute has been decided in trial.

7. From the affidavits presented in Court, there is no construction which has been put up in the disputed property except for a fence and an iron sheet gate. An order for maintenance of *status quo* is hereby given directing that there shall be no further construction or dealing with on the disputed properties i.e P 3857 and P 3857B until this suit is heard and determined. The costs of this application shall be costs in the cause.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 14th day of November 2017.

E.O.OBAGA

JUDGE

In the absence of parties who were aware of the date and time of delivery of Ruling.

Court Assistant: Hilda

E.O.OBAGA

JUDGE