



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC. CASE NO. 423 OF 2012
BENSON NJERU MURIRIAPLAINTIFF
VERSUS
SYOKIMAU FARM LIMITED.....1ST DEFENDANT
GILBERT MAGERA NORU2ND DEFENDANT

RULING

1. In the Application dated 30th October, 2013, the 2nd Defendant is seeking for the following orders:
 - a. That pending the hearing and determination of this Application inter-parties, a temporary injunction do issue against the Plaintiff restraining him or his servants and agents from erecting any structure, temporary and or permanent on the Plaintiff's property and or committing any act of trespass or dealing in any manner suit property.*
 - b. That cost of this Application be provided for.*
2. The Application is premised on the grounds that the Plaintiff has never served the 2nd Defendant with the suit papers; that the 2nd Defendant only knew about the suit after the Plaintiff had encroached on his land and that he is also claiming ownership of the land as per the counter-claim.
3. In his Affidavit, the Plaintiff deponed that he bought L.R. No. 12715/132 and 12715/133 which were previously known as plot numbers 68 and 69; that the Plaintiff and his agents have invaded the land and that he has been involved in fraudulent activities in acquisition of the land.
4. In response, the Plaintiff deponed that he was unable to trace the 2nd Defendant for service; that he served the 2nd Defendant by advertisement and that he bought ten(10) shares from the 1st Defendant on 2nd February, 1980 and was issued with two(2) share certificates on 24th July, 1981.
5. According to the Plaintiff, the 1st Defendant fraudulently had the titles issued in favour of the 2nd Defendant and that when the 1st Defendant summoned them for a meeting, the 2nd Defendant declined to attend the meeting.
6. The Plaintiff deponed that he is the one who has been in possession of the land since the year 1981.
7. The former Director of the 1st Defendant deponed that he was a Director in the 1st Defendant's company between 1974 and 1984; that the Plaintiff was not a member of the company and that the share

certificates that the Plaintiff is relying on are forgeries.

8. The advocates filed their respective submissions which I have considered.

9. From the pleadings and the annexures before me, it would appear that both the Plaintiff and the 2nd Defendant are claiming that they were allocated the suit land by the 1st Defendant.

10. The 2nd Defendant has exhibited the Certificates of Title showing that he is the registered proprietor of L.R. No. 12715/132 and 12715/133 which were transferred to him by the 1st Defendant in 1989.

11. However, the 2nd Defendant has not shown to this court the process that was followed before he obtained the said titles.

12. On the other hand, the Plaintiff has exhibited copies of the share certificates that were purportedly issued to him by the 1st Defendant on 24th July, 1981. However, the Plaintiff has also not explained why he was never issued with the title documents if indeed the land was allocated to him in 1980.

13. In view of the Plaintiff's averment that he is the one who has been in possession of the land since 1980, the most appropriate order to grant in the circumstances of this matter is for the maintenance of the prevailing status quo.

14. For those reasons, I make the following specific orders:

a. The prevailing status quo in respect of L.R. No. 12715/132 and 12715/133 to be maintained pending the hearing of the suit, meaning that neither the Plaintiff nor the Defendants, their agents or servants should transfer, alienate or develop the suit property.

b. Each party to bear his/its own costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 9TH DAY OF NOVEMBER, 2017.

O.A. ANGOTE

JUDGE