

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 527 OF 2017

DAVID STEPHEN KAMIRI MBIRIRI.....PLAINTIFF

VERSUS

WASHINGTON NJOGU KARIUKI.....1ST DEFENDANT

MUNIU KURIA.....2ND DEFENDANT

EMBAKASI RANCHING COMPANY LIMITED....3RD DEFENDANT

RULING

The Plaintiff filed the application dated 24/7/2017 seeking an order to restrain the Defendants from dealing or interfering with the Plaintiff's plot numbers N-235 and N-235B which were excised from L. R No. 10904/2 ("the suit property") pending hearing and determination of this suit. The Plaintiff seeks to have the order enforced by the Officer Commanding Embakasi Police Station.

The application is based on the grounds that the Plaintiff owns the suit property which the Defendants have unlawfully trespassed onto and threatened to evict the Plaintiff. The application is supported by the Plaintiff's affidavit. He states that he bought the suit property from Muniu Kuria and that he has had quiet and peaceful enjoyment and possession of the suit property until the 1st Defendant entered the suit property claiming to have purchased it from the 3rd Defendant. The Plaintiff annexed a copy of the sale agreement together with the share certificate issued by the 3rd Defendant. He also annexed photographs of the suit property which are unclear.

The 1st Defendant filed a replying affidavit in opposition to the application for injunction. He also gave notice that he intended to raise a preliminary objection that the suit is *res judicata* the subject matter having been litigated and a decree issued in Nairobi CMCC No. 4202 of 2004. The 1st Defendant claims that Plot No. N235 and N235B were described as P1935 and P1936 in the suit mentioned above. The Plaintiff claims that judgement was entered in favour of the 1st Defendant on 17/10/2007. The Plaintiff's application seeking to set aside Judgement was dismissed by the court on 21/7/2011. The Defendant avers that the court made a finding on 30/11/2011 that the suit was *res judicata*. The 1st Defendant contends that Plot Numbers N235 and N235B are the same as P1935 and P1936 which he owns.

The court is not satisfied that the Plaintiff has a *prima facie* case against the Defendant.

The court has looked at the Judgement of Judge Mbogholi given on 6th April, 2017 in which the court dismissed the appeal brought against the decision of the lower court; which had dismissed the Plaintiff's case on the basis that it was *res judicata*. The 1st Defendant's assertion that the suit is *res judicata* was not controverted by the Plaintiff.

The court agrees with the 1st Defendant that this suit ought to be dismissed for being *res judicata*. The application dated 24/7/2017 is dismissed with costs to the 1st Defendant.

Dated and delivered at Nairobi this 22nd day of December 2017.

K. BOR

JUDGE

In the presence of: -

Mr. Chengecha for the Plaintiff

No appearance for the Defendant

Mr. V. Owuor- Court Assistant