



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT**

**AT MILIMANI**

**LAND CASE NO. 317 OF 2017**

KAMAU GITAU.....PLAINTIFF

=VERSUS=

NICHOLAS MUTISYA.....1<sup>ST</sup> DEFENDANT

EMBAKASI RANCHING COMPANY LTD....2<sup>ND</sup> DEFENDANT

**RULING**

1. The applicant filed a Notice of Motion dated 9<sup>th</sup> May, 2017 in which he seeks the following orders:-

1) Spent

2) Spent

3) *That this Honourable Court be pleased to issue an Order of inhibition restraining any dealings of any nature whatsoever on PLOT NO. V4474 , Block C, RUAI EMBAKASI RANCHING without the express approval and consent of the plaintiff pending the hearing of this application interpartes.*

4) *That this Honourable Court be pleased to issue an order of injunction restraining the Defendants, their servants, workmates ,licensees, agents or any other persons acting on their own behalf or on behalf of the defendants from howsoever trespassing ,entering, evicting, encroaching, remaining in, selling, subdividing, taking over, dispossessing, alienating, reclaiming, fencing, cultivating, charging or further charging and encumbering in any way of harassing the plaintiff or interfering with his peaceful entitlement and possession of PLOT NO. V4474 BLOCK C, RUAI EMBAKASI RANCHING, pending the hearing of this suit.*

5) *That this Honourable Court be pleased to issue an Order of inhibition restraining any dealings of any nature whatsoever on PLOT NO.V4474 BLOCK C,RUAI EMBAKASI RANCHING without the express approval and consent of the plaintiff pending the hearing of this suit.*

6) *That the OCS -Ruai Police Station does assist in in enforcement of any orders issued herein.*

7) *That the costs of this application be borne by the Defendants.*

2. The applicant contends that on around April 2005, he purchased two plots from the second respondent. The two plots were **Nos. V4474** and **V4475** in Block C Ruai. He was eventually issued with non-member certificate number **009120** and **009121** on 25<sup>th</sup> January 2006. He took possession of the two plots and started cultivating on them.

3. In or around 2012/2013 he decided to put up a house on **Plot No.V 4475**. He dug a toilet, septic tank and begun a foundation for a house which he did not complete due to lack of funds. In 2015 he decided to sell plot **No. V4474** in order to raise funds to complete the house which he had started putting up .

4. In March 2017, the local chief and Deputy County Commissioner summoned him and the first respondent wherein it was claimed that plot **No. V 4475** belonged to the first respondent. The local chief later summoned him and the first respondent to the offices of the second respondent where without a hearing, he was asked to vacate the suit property. The first defendant later went to the suit property where he threatened to fence the same. This is what prompted the applicant to come to court.

5. The applicant's application has been opposed by the first respondent through a replying affidavit sworn on 27<sup>th</sup> June 2017. The first respondent states that he has no claim over any of the two properties of the applicant. That he is a stranger to the allegations by the applicant and that he is only aware that his late father owned plot P 1011 which was allocated to him by the second respondent. That the applicant's application is misconceived as the applicant does not know which relief's he is seeking and that in any case he cannot be sued by the applicant as he is not the administrator of the estate of his late father.

6. I have carefully gone through the applicant's application as well as the opposition to the same by the first respondent. The first respondent has denied all the averments in the applicant's supporting affidavit. He has even denied that he ever had meetings with the Deputy County Commissioner or the Chief and further that he has no association with the second respondent's officials. What I find strange is that the first respondent does not say whether the plot being claimed by the applicant is the same one which his father was allocated. During these proceedings, the first respondent's lawyer was opposed to any interim orders of injunction being granted. It is therefore ironical that the first respondent is claiming that he has nothing to do with the suit property.

7. The applicant is alleging that the first respondent is working in cahoots with the second respondent to take his plot. The second respondent only entered appearance but did not file any grounds of opposition or replying affidavit. The allegations against the second respondent are therefore not controverted. The applicant has demonstrated through documents that he was allocated two plots. He was given non-membership certificates. In 2015, he paid Kshs.40,000/= for site visit when his two plots were confirmed by the company. The applicant is alleging that the first defendant is threatening to interfere with his possession of the suit property. Though the first respondent is denying this, I find that this is a mere denial. The first respondent seems to be under the mistaken belief that since he has no letters of administration in respect of the estate of his late father, he cannot be sued. The applicant is not claiming any land from the estate of the first defendant's father. He is seeking to protect his own property from trespassers like the first respondent.

8. From the documents availed by the applicant, I am satisfied that he has disclosed that he has a prima facie case against the respondents. There is no evidence that the suit property is registered. An order for inhibition cannot therefore be issued. However as the applicant has demonstrated that he has a *prima facie case*, I allow an injunction in terms of prayer four (4) of the Notice of Motion dated 9<sup>th</sup> May 2017. The applicant shall also have costs of the application in terms of prayer **seven (7)**.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 14<sup>th</sup> day of December 2017.**

**E.O.OBAGA**

**JUDGE**

In the presence of;-

Mr Mireri for 1<sup>st</sup> defendant

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**