



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO 215 OF 2015**

**JOSEPH NJENGA NGARAMA .....PLAINTIFF**

**VERSUS**

**OLIVE WAMUHU KINYANJUI .....1<sup>ST</sup> DEFENDANT**

**THE COUNTY GOVERNMENT OF NAKURU .....2<sup>ND</sup> DEFENDANT**

**RULING**

***(Application for injunction; principles to be applied; plaintiff claiming to own suit property and asserting that the same was allotted to him; defendant also claiming same land and asserting title to it; best to decide the matter on a balance of convenience; balance of convenience tilting in favour of maintaining the status quo; status quo ordered to be maintained)***

1. This suit was commenced by way of plaint filed on 28 July 2015. In the plaint, the plaintiff has pleaded that he is the legal and beneficial owner of all the land parcel Naivasha Municipality Block 8/56 (formerly unsurveyed commercial plot Naivasha Town). He has pleaded that he enjoyed all rights of ownership and possession and has developed on the plot a semi-permanent building and an electric fence. It is claimed that the 1<sup>st</sup> defendant has been unlawfully putting herself out as the owner of the said property when she is not. It is averred that on 22 July 2015, the plaintiff was informed of the intentions of the 1<sup>st</sup> defendant to move into the property and remove the plaintiff's developments and place herself in possession. In this suit, the plaintiff has asked for the following orders :-

*(a) A declaration that the plaintiff is the lawful and rightful owner of the parcel of land known as Naivasha Municipality Block 8/56 (formerly Unsurveyed Commercial Plot Naivasha Town) measuring approximately 0.9 Ha situate in Naivasha Town, Naivasha Sub County, Nakuru County to the exclusion of the 1<sup>st</sup> defendant and all other persons.*

*(b) A permanent injunction restraining the defendants by themselves, their agents servants employees and/or persons claiming under or in trust for them, from entering into, remaining upon, fencing, selling, disposing, alienating, accumulating building or other materials, digging a dam or water reservoir, constructing permanent or temporary structures upon, or otherwise committing acts of waste, equitable or otherwise, or in any manner howsoever interfering with the plaintiff's quiet use, possession and enjoyment of the parcel of land known as Naivasha Municipality Block 8/56 (formerly Unsurveyed Commercial Plot Naivasha Town) measuring approximately 0.9 Ha situate in Naivasha Town, Naivasha Sub County, Nakuru County.*

*(c) Costs of this suit.*

*(d) Any other or further relief as this honourable court may deem fitting and just to grant.*

2. Together with the plaint, the plaintiff filed an application for injunction seeking to restrain the defendants from interfering with the suit property pending hearing and determination of the suit. It is this application which is the subject of this ruling.

3. In his supporting affidavit, the plaintiff/applicant, has deposed inter alia that he is a church minister and that he together with other church ministers, applied to the Commissioner of Lands to be allocated some land in the year 1992. This, it is said, was approved by the President. They were then allocated some plots and he personally was allocated a portion of land then described as “A”, but in the letter of allotment it was described as UNS. COMMERCIAL PLOT NAIVASHA TOWN. He has annexed a copy of the said letter of allotment which was issued on 27 October 1994. He has stated that the portion of land measured 0.9 Ha. He thereafter instructed a surveyor who surveyed the land and submitted the records to the Director of Survey on 11 April 2002. He thereafter instructed one Samson Gachuhi to have the plot card opened at the Municipal Council of Naivasha. The said Samson Gachuhi paid all the necessary dues and also requested for permission to fence and build a temporary structure. Permission was granted on 12 August 2010. At around the same time, the records for the earlier survey could not be traced at the office of the Director of Survey and he was advised to resubmit the same. This was done vide a letter dated 5 October 2010. The same were acknowledged and the land was then parcelled as Naivasha Municipality/Block 8/56. He made payments for Stand Premium and a site visit was done which confirmed that he was on the ground. He was however apprehensive that someone was interfering with the records in the Lands office. He deposed that among his co-applicants was one Christopher Mburu Kamau who was allocated a plot “C” which he then sold to the 1<sup>st</sup> defendant. This land was parcelled as Naivasha Municipality Block 8/3. It is deposed that the 1<sup>st</sup> defendant now started laying claim to the suit land asserting that it is an extension of her own parcel of land which “extension” was described as Naivasha Municipality Block 8/97. He complained to the National Land Commission who sent an officer to the ground. The officer wrote a letter dated 8 June 2015 stating that the parcel number used by the 1<sup>st</sup> defendant are null and void. On 22 July 2015 while he was awaiting the processing of title, he was informed that the 1<sup>st</sup> defendant agents had gone to the ground and attempted to bring down his house. He fears that the 1<sup>st</sup> defendant is influential as she is wife of a Member of Parliament.

4. Both defendants filed replying affidavits to the subject application. The 1<sup>st</sup> defendant/respondent, deposed inter alia that she is the registered owner of the land parcel Naivasha Municipality Block 8/97 measuring 2.4720 hectares which is partly comprised of the disputed property. She has deposed that she was allocated the plot in the year 1998 by the Commissioner of Lands and has annexed a letter of allotment. She is not aware of any allocation of land to the plaintiff but she is of the view that the documents annexed by the plaintiff are forgeries and that the plaintiff and the said Samson Gachuhi are working in cahoots to grab the land from her. She states that it is this Gachuhi who is the actual claimant and the plaintiff is only being used as a pawn. She has pointed to various documents tabled by the plaintiff which bear the names Samson Gachuhi. She has averred that if the plaintiff’s letter of allotment of 27 October 1994 was genuine, there was in any event a condition to pay stand premium, within 30 days which the plaintiff has admitted paying in January 2012 but the cheques were not cashed as there was no land to pay for. She has stated that all letters of complaint were written after the year 2010 when the plaintiff and Samson Gachuhi had been advised that the suit land belongs to the 1<sup>st</sup> defendant. She has on her part also protested an alleged disappearance of her file in the Lands office and also has correspondences that the documents of Samson Gachuhi are not genuine. She now has a lease to the land parcel Naivasha Municipality Block 8/97. She has denied having any influence and has stated that she is a simple business lady.

5. The 2<sup>nd</sup> defendant’s replying affidavit has been sworn by J.M. Motari, the Secretary and Head of Public Service for Nakuru County. He has deposed that it is not within their mandate to establish who the legal owner of the suit land is. He has however deposed that the 1<sup>st</sup> defendant submitted a copy of the lease for the land parcel Naivasha Municipality Block 8/97 and a development plan. These plans were

approved on 24 June 2015. He is of the view that the plaintiff's application does not meet the basic conditions for an order of injunction.

6. The plaintiff filed a further affidavit (it should actually have been titled supplementary affidavit) to support his application. He has more or less reiterated what is in his initial affidavit and has challenged the legality of the extension granted to the 1<sup>st</sup> defendant. He has deposed that on the ground he and the 1<sup>st</sup> defendant occupy different and defined portions of land and that there is a road between their respective portions. It is averred that the 1<sup>st</sup> defendant has now built a perimeter wall around her land and that he is still in occupation of his land.

7. The 1<sup>st</sup> defendant filed a further replying affidavit. She has reiterated ownership of the land parcel Naivasha Municipality/ Block 8/97 and further cast doubt as to the authenticity of the plaintiff's documents. She has however denied that she and the plaintiff occupy different and defined portions or that there is a road separating the two. She has explained that the property which is walled is Nakuru Municipality Block 8/3 and not the property Naivasha Municipality Block 8/97 which according to her is what is in dispute and measures 2.4720 Ha. She has averred that the plaintiff has submitted a letter of allotment showing 0.9 Ha and has not explained any basis for purporting to fence the entire 2.4720 Ha. She has stated that the fencing was done by Samson Gachuhi vide a letter of approval dated 23 July 2010 from the Municipal Council of Naivasha. She has alluded to the possibility of the two claimed parcels being on different ground.

8. I have considered the application for injunction. In an application of this nature, what the court is essentially being asked to do is to pronounce on how best the subject matter of the suit should be preserved pending hearing of the matter. It is not the function of the court, at this stage of the proceedings to make final pronouncements as to the rights of the parties. That needs to await a hearing on merits.

9. In this case, it is apparent that what we have is a hotly contested land dispute. There are claims and counterclaims between the plaintiff and defendant that what the other party holds are not genuine land ownership documents. Each party has claimed that the other forged land documents to assert ownership. I am afraid that it will not be wise for me at this stage of the proceedings to venture into who has a better claim than the other. I think that needs to await trial.

10. All the same, I need to make a decision on how best to preserve the subject matter. Regretfully, none of the parties filed any report by a surveyor, land economist, or other expert, to demonstrate how the land in dispute is being utilized. There are some photographs annexed but they don't mean much. What I can see is a barbed wire fence and some *mabati* structures. I think it is this development that the plaintiff claims to have put up. There is clearly no electric fence that I have seen.

11. Given the counteraccusations, I think it is best that the disputed property do remain, on the ground and in use, in the manner that it is currently, until the suit herein is disposed of. In other words, it is my view that the current status quo be maintained until the suit is heard and determined. The plaintiff believes the land in dispute to be Naivasha Municipality Block 8/56. The 1<sup>st</sup> defendant is of the view that the land in dispute is an extension of Naivasha Municipality Block 8/97. I cannot tell at this stage where the land in dispute lays. I think that in the premises, it is only fair that what each party considers to be Naivasha Municipality Block 8/56 or Naivasha Municipality Block 8/97 be preserved in the manner that they currently are until the dispute is heard and determined. No party should make any additional developments on the land or use the land in any other way other than the current user until this suit is finalized. Neither should any party sell, charge, transfer, lease or otherwise adversely deal with the properties in issue .

12. The upshot of the above is that I order the application dated 27 July 2015 to be compromised by an order of status quo. Costs of the application shall be costs in the cause.

13. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 17<sup>th</sup> day of March, 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of : -**

Mr Biko present holding brief for Mr P.K. Njuguna for plaintiff /applicant.

Mr Ndubi for 1st defendant /respondent

Mr M J Okumu present for 2<sup>nd</sup> defendant/respondent

Court Assistant: Janet

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**