



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO 243 OF 2016**

**SAMUEL GICHUHI.....PLAINTIFF**

**VERSUS**

**NAHASHON MATHENGE .....DEFENDANT**

**RULING**

***(Application for injunction; defendant not filing anything to oppose the application; plaintiff showing that the suit property was allotted to him; defendant encroaching into the land; defendant not having filed anything to show that he has any interest in the land; prima facie case established; application allowed)***

1. This suit was commenced on 6 July 2016 by way of plaint. The case of the plaintiff is that he is the legal allottee of the Plot No. UNS- Light Ind. Plot No. 85 - Ol Kalou Township measuring about 0.045 Ha (hereinafter the suit land) which he avers he acquired through an allotment letter dated 6 August 1993 given to him by the Commissioner of Lands. He has pleaded that the defendant has now encroached into his said plot and has commenced permanent developments. In this suit, the plaintiff wants the defendant barred by an order of permanent injunction from the suit land.

2. Together with the plaint, the plaintiff filed an application under Order 40 of the Civil Procedure Rules, seeking orders to have the defendant restrained from the suit property pending hearing of the suit. Despite being served with summons and with the application, the defendant has neither entered appearance and neither has he responded to the application. The only material that I have is therefore that supplied by the plaintiff.

3. In his supporting affidavit, the plaintiff has annexed copies of the allotment letter issued on 6 August 1993. He has also annexed copies of receipts showing that he paid the fees that he was asked to pay upon being allotted the land together with receipts for payment of land rates.

4. As I mentioned, the defendant has not tendered anything to demonstrate any right over the suit land. The plaintiff has displayed his allotment letter and receipts showing payment of the requisite fees. I think he has demonstrated a prima facie case with a probability of success and is entitled to the order of injunction sought.

5. I therefore allow the application and make the following orders:-

*(i) That pending the hearing and determination of this suit, the defendant is hereby restrained by an order of injunction from commencing or continuing with any sort or developments in the*

*land described as UNS-LIGHT IND. PLOT NO.58 OL KALOU TOWNSHIP.*

*(ii) The pending the hearing and determination of this suit, the defendant is hereby restrained by an order of injunction from entering, being upon, or in any other way interfering with the possession of the land described as UNS-LIGHT IND. PLOT NO.58 OL KALOU TOWNSHIP.*

*(iii) The plaintiff shall have the costs of this application.*

It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 20<sup>th</sup> day of September 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of: -**

No appearance on the part of Mr. Waichungo for plaintiff/applicant

No appearance on the part of the respondent

C/Asst. Janet

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**