



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC CASE NO. 207 OF 2015

PATRICK GITHUI KANG'ERI.....PLAINTIFF

-VERSUS-

SIMON MWANGI WAMBUGU.....DEFENDANT

ELENA WAKARIMA NDERITU.....INTENDED 3RD PARTY

RULING

1.The plaintiff/applicant filed an application to this court by way of Notice of Motion dated **14th July, 2015** seeking orders of injunction against the defendant/respondent, his family members, servants, agents or anyone under him that they be restrained from trespassing into, alienating, sub-dividing, leasing, fencing or in any other manner interfering with the parcel of land known as **Laikipia/Euasonyiro/Suguroi/Block Vi/1903** (the suit property) pending the hearing and determination of the suit, plus costs.

2.The application is premised on the grounds on its face and is supported by the affidavit sworn by the applicant on **14th July, 2015**. In that affidavit, he depones that he is the registered proprietor of the suit property; that the respondent trespassed into the suit property and fenced off 1 acre thereof; that despite his advocates writing two demand letters to the respondent urging him to stop the aforesaid actions, he has blatantly ignored them. He prays for an order of injunction to protect his proprietary rights which are being infringed.

3.In response, the respondent swore a replying affidavit on **26th August, 2016**. He avers that he purchased 1 acre from the applicant's mother, out of **Laikipia/Euasonyiro/ Suguroi/BlockVI/1904** vide a sale agreement dated **3rd July, 2012**. It is his contention that in 2015, the applicant started claiming that the respondent was trespassing on his parcel of land. According to him this confusion could have been caused by either the applicant's mother selling to him the wrong parcel of land or the plaintiff encroaching on his mother's parcel of land.

4.Before this application could be heard and determined, the defendant filed a Third Party Notice dated **28th September, 2015** on the grounds that the presence of the third party (plaintiff's mother) would be essential in determining the real issues before the court. This being an exparte application, the same being unopposed and the court being satisfied that the plaintiff's mother (being the one who sold the 1 acre to the respondent) is a necessary party in this suit, enjoins her as a party under **Order 1 Rule 10 (2)** of the **Civil Procedure Rules 2010**.

5.Regarding the motion dated 14th July, 2015, on behalf of the plaintiff, Mr. Macharia submitted that the respondent had encroached on the suit property and fenced off approximately 1 acre but he was not carrying out any farming activities. He urged the court to preserve the suit property pending the hearing and determination of the suit.

6.In response, Mr. Muhoho for the defendant submitted that there was no evidence that the portion occupied by the respondent forms part of the applicant's land.

7.In support of his case, the plaintiff exhibited a title deed in respect of land parcel **Laikipia/Euasonyiro/Suguroi/ Block Vi/1903** registered in his name.

8.On his part, the defendant exhibited a sale agreement between him and Elena Wakarima Nderitu for purchase of 1 acre out of land parcel **Laikipia/Euasonyiro/Suguroi/ Block VI/1904**.

9.I have carefully considered the pleadings and the oral submissions by the respective counsels. I am not satisfied that the applicant has established a *prima facie* case. I say this because he has not demonstrated that the portion of land occupied by the defendant is part of **Laikipia/ Euasonyiro/Suguroi Block VI/1903** and/or that the 1 acre sold to the respondent by his mother is part of the applicant's parcel of land.

10. Taking into consideration that the applicant has a title deed to parcel No. 1903 and the respondent has a sale agreement between the applicant's mother and himself for purchase of a portion of parcel No. 1904, I find it necessary to involve the Laikipia County Land Registrar and Land Surveyor to visit the locus and establish the boundaries of **LR No. 1903** and **1904** in the presence of the parties within 60 days from the date hereof and file their report in court within 14 days of the said visit. The cost for the site visit by the Land Registrar and Land Surveyor shall be shared by the parties. In the meantime status quo shall be maintained as follows:

Both parties are restrained from alienating, subdividing, fencing or developing the portion in dispute pending the hearing and determination of the suit.

11.The matter to be mentioned on 30th March, 2017 to confirm whether the Land Registrar and Surveyors report has been filed.

Dated, signed and delivered in open court at Nyeri this 2nd day of December, 2016.

L N WAITHAKA

JUDGE

In the presence of:

Mr. Waweru Macharia for the applicant/plaintiff

N/A for the respondent

Court clerk - Esther