



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIIRONMENT AND LAND COURT AT NAIROBI**  
**ELC CIVIL CASE NO. 41 OF 2015**

**EMBAKASI RANCHING COMPANY LIMITED.....PLAINTIFF/APPLICANT**

**VERSUS**

**PETER NDUNGU MUHURI.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**GEORGE MUCHIRI MUHURI.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. I will be frugal on this matter wherein the Defendant is sought to be restrained from interfering with the suit property or trespassing thereunto.
2. The Plaintiff, it is not contested is the registered proprietor of Land Reference Number 12715/549. The suit property was originally registered in the name of Syokimau Farm Ltd who transferred it to the Plaintiff in 1991. All the records reveal that the Plaintiff is the registered and beneficial owner of the property. The land rates' records reveal so too.
3. With such registration as to ownership intact the Plaintiff contends that it is entitled to enjoy the benefits, privileges and rights appurtenant to such registration as provided for under **Section 24 and 25** of the **Land Registration Act**. The Defendants however are not letting the Plaintiff enjoy such rights and have unjustifiably intruded so says the Plaintiff. The Defendants according to the Plaintiff are trespassers with no right over the property whatsoever.
4. The Defendants contest the application by the Plaintiff. The Defendants also claim to own the same parcel of land. The Defendants contend that twice they have used the said property as collateral for loans advanced to the Defendants or to their associate companies.
5. It is unclear under what circumstances the title to the suit property was pledged to the lenders in question as collateral. What certainly I have no doubt about is the fact that the registered proprietor of the suit property recognized by law is the Plaintiff. I am also certain that as proprietor nothing would have prohibited the Plaintiff from charging the suit property for the purpose of securing payment of a debt due from the Plaintiff or a third party to any other person. It was perfectly in order for the suit property to be used as security for repayment of any monetary advances to the Defendants' father or to the Defendants. That however did not mean that the Plaintiff disposed of its interest in the suit property to the Defendants or the Defendants' father. The interest is still with the Plaintiff.

6. I come to the sudden yet justifiable conclusion that the Defendants have no legal or equitable interest in the property. Instead the Plaintiff has and is the holder of the legal interest. Effectively, the Plaintiff has established a prima facie case with chances of success when it states that the Defendants have ventured into the suit property without the Plaintiff's consent and permission. Such intrusion is trespass and actionable *per se* for that matter. The Defendants ought to be restrained.

7. I also come to the conclusion that the circumstances and facts of this case would dictate that the transgression is dealt with and disposed of summarily. There is no reason to deny the mandatory orders sought by the Plaintiff. I am of the view that at trial the court would not hesitate to grant a similar mandatory injunction. I feel a high degree of assurance that if I allow the mandatory injunction then at trial I will still be vindicated: see **Kenya Breweries Ltd & Another –v- Washington Okeyo [2000] 1EA 109** and also **Shepherd House Ltd –v- Sandham [1972] Ch 340**. As the intrusion has not been denied by the Defendants, I allow the application brought by way of the amended Notice of Motion and filed in court on 10<sup>th</sup> March, 2015 in terms of prayers 3, 3A and 4A thereof. I also award the costs of the application to the Plaintiff.

8. Order accordingly.

**Dated, signed and delivered at Nairobi this 19<sup>th</sup> day of March, 2015.**

**J. L. ONGUTO**

**JUDGE**

**In the presence of:-**

..... for the Plaintiff/Applicant

..... for the Defendants/Respondent