



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

ELC NO 243 OF 2014

JOEL KIMUTAI TUIYAPLAINTIFF

VERSUS

MATHEW KIPKURUI TOO.....DEFENDANT

RULING

(Application for injunction; application not opposed; application allowed).

1. The suit herein was commenced by way of plaint filed on 28 August 2014. On 3 October 2014, the plaintiff filed an application dated 9 September 2014, which is the subject of this ruling. The application is for injunction and it is filed pursuant to the provisions of Order 40 Rule 1, of the Civil Procedure Rules, 2010. Despite being served with the pleadings and application, the defendant has neither entered appearance, filed any defence, or reply to the application. Neither did he attend at the inter partes hearing of the application despite being served. The only material before me is therefore that tendered by the plaintiff.

2. The case of the plaintiff is that in the year 2000, he was allocated a Plot No. 79A at Simotwet Trading Centre, while one Musa Kirogu (not a party to these proceedings), was allocated a Plot No. 79B. In the year 2006, the plaintiff purchased the plot No. 79B from Musa Kirogu, and later merged the two plots into a Plot No.79. On 6 November 2011, he was issued with a letter of allotment by the County Council of Nakuru. It is averred that in the month of September 2013, the defendant without any justification, invaded the Plot No. 79 and started constructing a pit latrine. The plaintiff reported the matter to the area Chief as well as the County Council of Nakuru and the defendant was ordered to desist from interfering with the plot. The defendant stopped his actions temporarily, but came back and continued with his activities. In the suit, the plaintiff wants a declaration that the suit property belongs to him, and a permanent injunction to stop the defendant from trespassing into the said plot.

3. To the supporting affidavit, the plaintiff attached an allocation list which he says shows the persons allotted the plots No. 79A and 79B; an agreement between himself and one Tue Kirogu; an allotment letter for the Plot No. 79 dated November 2011; payment receipts for rates; and photographs of the site. The supposed allocation list is handwritten and does not have any official stamp. I am not too certain of its authenticity, but I can see the names of the plaintiff and Musa Kirogu, against the Plot numbers 79A and 79B. I have also seen the agreement between Tue Kirugo and the plaintiff wherein the former sold to the latter the plot No. 79B at a consideration of Kshs. 40,000/= on 11 July 2006. I have also taken note of the letter dated 6 November 2011 which is drawn by the County Council of Nakuru. It is a letter stating that the plaintiff has been allocated the Plot No. 79.

4. The plaintiff may not have a certificate of title to the land, but I think he has shown, prima facie that he has an interest in it. More importantly, the defendant has not filed anything to demonstrate that he has any right over the suit property. From the evidence tabled at this stage of the proceedings, I think the plaintiff has shown a prima facie case. In any event, the balance of convenience tilts in favour of preserving the property and not allowing the defendant to waste it.

5. For the above reasons, I allow the application for injunction. I order the defendant not to enter, be upon, or develop any structure, on the Plot No. 79 situated at Simotwet Trading Centre, until the hearing and determination of this case. The costs of this application shall be costs in the cause.

It is so ordered.

Dated, signed and delivered in open court at Nakuru this 16th day of June 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :-

Mr Biko holding brief for Mr Akang'o for the plaintiff/applicant.

N/A for defendant who has not entered appearance.

CA: Janet.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU