



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC NO. 802 OF 2013

JOAN KABURO MAGAMBO.....PLAINTIFF

VERSUS

NJUGUNA KIBE.....1ST DEFENDANT

EMBAKASI RANCHING COMPANY LIMITED.....2ND DEFENDANT

RULING

The Plaintiff in her application dated **4th July 2013** seeks an order of injunction restraining the Defendants from trespassing, constructing, selling, charging, lodging complaints and or in any other way interfering with the peaceful enjoyment of land premises known as **Plot No. P.9726** situated at **Gatuoro, Ruai on Embakasi Nairobi** measuring **100x100 feet** pending the hearing and determination of the suit. The application is premised on grounds outlined in the application and supported by an affidavit sworn by the Plaintiff.

In the affidavit, the Plaintiff deposed that she is the owner of the suit plot having purchased it from the 2nd Defendant on **15th July 1994**, at a consideration of **Kshs. 15,000/-**. She immediately took possession upon being shown the plot by the 2nd Defendant's surveyor and has been living thereon since 1999. However, that in June 2013, the 1st Defendant trespassed onto the plot and has been bringing prospective purchasers with the intention of disposing it off. The Plaintiff deposes that the trespass has caused her loss and damage and that the 2nd Defendant has so far been unable to solve the situation.

The **James Njuguna Peter** swore a Replying Affidavit on **13th August 2013** and deposed that he is the son of the 1st Defendant, who died in 2008 and has authority to defend the estate of the deceased pursuant to Succession Cause No. 1885 of 2013. The deponent stated that his deceased father purchased two plots H. 345 and H.346 from the 2nd Defendant in 1982 at a consideration of **Kshs. 7000/-** whereafter after he was issued with a share certificate. Subsequently, the deceased paid **Kshs.1,000/-** being survey fees and the two plots were demarcated in the 2nd Defendant's official map. The deponent stated that his father's plot H 346 is not the same as the Plaintiff's plot 9726. Further, that the Plaintiff has been illegally occupying a plot that does not belong to her.

The deponent refuted the claim that the Plaintiff has been in occupation of the plot since 1999 deposing that as at the date of their father's demise in 2008, the plot was vacant until 2012 when they discovered encroachment. It was deposed that both parties together with officials of the 2nd Defendant went to the site and after production of documents in proof of ownership, it was established that the suit plot belongs

to the deceased and that the Plaintiff was advised to vacate the dispute plot but to date she is yet to comply. The deponent contended that the Plaintiff was not deserving of the orders sought.

The application was canvassed by way of written submissions which I have carefully read. Both parties have annexed documents to show ownership of their respective plots. Despite their claim being that of different plot numbers, they both assert that their plots are situated on the same physical location. It is evident, therefore, that the dispute between the parties is the location of their respective plots. The unfortunate bit is that the 2nd Defendant, who would shade more light as to the physical locations of the plots, failed to file a response to the application, though duly served. Nevertheless, the nature of the dispute is one which cannot be adjudicated over at the interlocutory stage. The general principle is that where there are serious conflicts of facts, the trial court should maintain the status quo until the dispute has been decided in trial. See **Ougo & another v Otieno Civil Appeal No. 3 of 1987 (1987) KLR.**

Having now considered the pleadings herein and the annexures thereto, the Court finds that this is a case that deserves Maintenance of ***Status Quo***. Consequently the Court enters the following Orders:-

1. ***Status quo is hereby entered to the effect that the Defendant shall not interfere with the Plaintiff's possession and Plaintiff shall also not dispose off or in any manner alienate the suit plot pending the hearing and determination of the suit.***

2. ***Costs of the application shall be in the cause.***

From the Replying Affidavit sworn on behalf of the 2nd Defendant, it has emerged that the 2nd Defendant is deceased. For good order, and pursuant to the inherent powers of this court and the overriding objective provided under **Sections 1A, 1B, 3A and 63 of the Civil Procedure Act**, the legal representatives of this the 2nd Defendant are hereby directed to file an application for substitution under **Order 24 of the Civil Procedure Rules** within 30 days from the date hereof. In default, the Plaintiff be at liberty to make the said application.

Dated, Signed and Delivered this 5th day of June, 2015

L. GACHERU

JUDGE

In the Presence of:-

.....For the Plaintiff/Applicant

.....For the 1st Defendant/Respondent

.....For the 2nd Defendant/Respondent

Hilda: Court Clerk

L. GACHERU

JUDGE