



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**CIVIL SUIT NO. 336 OF 2012**

**MICHAEL MAINA KARIITHI ..... PLAINTIFF**

**VERSUS**

**JOHN MAINA KINGORI.....DEFENDANT**

**RULING**

1. Before me is an application filed by the plaintiff for determination dated **21<sup>st</sup> May, 2013**. The application is opposed.
2. In a nutshell, the application seeks a temporary injunction to restrain the defendant by himself, his agents, servants from trespassing, entering, constructing or interfering in any way whatsoever with **plot No. 88 or 73** (hereafter referred to as the suit land) in **Nyandarua Progressive Agencies Company Limited** (hereafter referred to as the Company) pending the hearing and determination of the suit.
3. After several false starts, written submissions were eventually filed by the rival parties in support of their respective contentions which I have read and taken into consideration.
4. Briefly and as I understand from the pleadings and submissions, the plaintiff instituted this suit as the owner of plot No. 88. The history of his ownership to the land goes back to 1974 when he became a shareholder of Company from whom he bought several plots namely plots Nos. 73,74,75,76,99 and 100. In 1997 when a new board of directors were elected into office and passed a resolution that any vacant plots be sold, he requested them to exchange his plot no. 99 with a vacant plot No. 88. This was done and later affirmed at a general meeting held on **21<sup>st</sup> January, 2012** as evidenced by MMK2 and MMK3. The applicant then surrendered plot No. 99, took possession of plot No. 88 while vacant and has been in occupation since the year 2002. All his plots were later consolidated to become plot No. 73 and No. 9-12.
5. In December 2011, the defendant trespassed onto plot No. 88, erected illegal structures therein and started cultivating thus interfering with his quiet occupation and enjoyment of the suit land.
6. In a rejoinder the respondent filed a replying affidavit where he chose to rely on an affidavit filed in a similar matter **Nakuru CMCC No. 113 Of 2012**. He deponed that he had been a member of the company since 1978. That he was allocated plot No. 1000 after the first balloting in absenture. In 1986 he participated in the second ballot and was allocated plot no. 89 but exchanged it with the owner of plot No. 88 which was duly authorised by the Secretary General of the Company **Mr. Peter Wanjohi**. He left the suit land in the care of **Zachariah Gachuhi** and in 1992 leased it to the late **John Mwangi** until 1998 when his lessee was stopped from cultivating the suit land by the company and the plot was allocated to

another person for being vacant.

7. In reply the applicant in his further affidavit depones that the defendant failed to complete full payment for his share in the company and for plot no. 88 ;that this was the reason why the defendant lost his plot and the same was later allocated to him ; that the defendant had failed to reclaim his plot, had been indolent for 13 years since 1998 and had never been in occupation of the suit land save for an attempt in 2011 when he put up a semi-permanent house therein.

8. From the documents exhibited by both the plaintiff and the defendant it is clear that both parties were members of the Company. It is also common ground that each of them was allocated plot No. 88 although at different times by the company. The plaintiff claims that he was allotted the land by the company after the defendant failed to fulfill his obligation and he was allowed to exchange plot No. 99 with plot No. 88 while the defendant claims to have exchanged his plot No.89 with a Neighbours No.88.

9 Before me therefore is a scenario where rival parties lay claim to the same physical land. None of them have title documents to the suit land. The directors of the company in the general meeting of 2011 acknowledged that there was a problem relating to some of the plots that had been sold belonging to shareholders. In minute 5 of their minutes for the said meeting it is stated in part as follows:

**".....the shareholders resolved in the above special general meeting of 13/12/1997 that re-registration to be carried out to compile a register of shareholders according to resolution No. 1. However despite the fact that the exercise started 22/12/1997 a few shareholders never turned up until last year. Some of their plots had been sold by the company to raise money for the survey expenses. However those with these kind of problems are going to have them resolved as has been agreed by the directors....."**

10. In my view the problem facing the parties in this suit was occasioned by the company. It is important that the company be joined as a party and the plaintiff be directed to amend his pleadings to include them. This is the allocating body and the parties in this suit are their members to whom they allocated the same parcel of land. I think it is imperative that the company or its officers attend court and really explain how the present situation arose.

11. The plaintiff alleges that he has been in occupation of the suit land since 2002 and the defendant only trespassed in 2011 and erected a semi permanent structure therein. On the other hand the defendant states that he took possession of the suit land in 1986 until 1998 when his lessee was asked to stop cultivating by the company. The plaintiff then demolished the semi permanent structure erected by the defendant on the said parcel leading to his arrest and being charged with a criminal offence. Granting the orders prayed for by the plaintiff will give the plaintiff an advantage over the defendant giving the impression that he is the legal owner of the suit land. It is important in my view to hear all the parties in this suit during trial on merit in order to do justice.

12. In the circumstances, the order that best commends itself to me is that status quo be maintained as obtaining today on the suit land. Additionally and as I have observed above, Nyandarua Progressive Agencies Limited is best placed to explain the current mess and I order that they be joined as a party in this suit.

13. Costs to abide the outcome of the suit.

**Dated, signed and delivered on this 11<sup>th</sup> day of July 2014.**

**L N WAITHAKA**

**JUDGE.**

**PRESENT**

Mr Mwangi for the plaintiff

N/A for the Defendant

Emmanuel Maelo : Court Clerk

**L N WAITHAKA**

**JUDGE**