

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI**

MILIMANI LAW COURTS

Civil Suit 615 of 2004

STEPHEN NDUNG’U NJOROGE.....PLAINTIFF

VERSUS

JANE WAIRIMU KARUITHIA.....DEFENDANT

RULING

This is an application brought by the plaintiff under Order XXXIX Rule 1 and 2 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking a temporary injunction restraining the defendant from trespassing and or occupying the plaintiff’s land being L.R NO.NYANDARUA/NDEMI/2653 until the hearing and determination of this suit.

Mr. Njenga for the plaintiff submits that the plaintiff is the registered proprietor of the suit land and that the defendant trespassed into the suit land and started cultivating the same without the consent of the plaintiff..

Miss Mugo for the defendant submitted that the orders sought by the plaintiff are not tenable as the issues raised can only be canvassed at the full hearing of the suit. She went further to submit that the plaintiff seeks orders to injunct the defendant from LR NO. NYANDARUA/NDEMI/2653 but the defendant is in possession of LR NO. NYANDARUA/NDEMI/76 which is a different premises and which is registered under the Settlement Fund Trustee. Miss mugo further submitted that the defendant was allocated LR NO. NYANDARUA/NDEMI/76 in 1982 when she took possession and she has lived there continuously to date so that the issue of trespass on LR NO. NYANDARUA/NDEMI/2653 does not arise.

Order XXXIX Rule 1 provides as follows:

“1” where in any suit it is proved by affidavit or otherwise

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree or..... the court may by order grant a temporary injunction to restrain such acts or make such order for the purpose of staying and preventing the wasting, damaging, alienating, sale removal, or disposing of the property as the court thinks fit until the disposal of the suit or until further orders.

In this suit each party claims to be occupying his premises distinct with a different registration number and it could seem that the problem could be on the ground. Since the plaintiff has not proved that this property is in danger of being wasted, damaged or alienated by the defendant who claims to be occupying a different property, I decline to grant orders as prayed in the Chamber summons dated 19th April 2004.

The only suitable orders that can issue at this stage is that status quo be maintained until the hearing and determination of this suit.

Costs in the cause.

Dates and delivered at Nairobi this 9th day of October 2006.

J.L.A. OSIEMO

JUDGE