



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 24 OF 2016

SIMON WAFULA WESUSA.....PLAINTIFF

VERSUS

RICHARD SHIUNDUDEFENDANT

RULING

1. The Plaintiff/Applicant is the registered owner of **LR No Saboti/Saboti Block 3/Chebukaka/2** measuring 4.928 hectares (suitland). The Applicant brought a Notice of Motion dated 1/ 2/2016 in which he seeks to restrain the Respondent from proceeding to construct a house on the suit land until the case herein is heard and determined.
2. The Applicant contends that he bought the suit land from **Muroki Farmers Co-operative Society** and had it registered in his name. A title deed was issued to him on 1/7/1992. In January 2016, the Respondent invaded the land and forcefully started putting up a house on it without any colour of right. The Applicant asked him to desist from doing so but he did not stop his actions of trespass.
3. The Applicant's application is opposed by the Respondent through a replying affidavit sworn and filed in court on 11/2/2016. The Respondent contends that he has been wrongly sued in this case. That his name is not **Richard Shiundu** but **Peter Shiundu Barasa** and that he is not the one who is putting up the house on the suit land. He further contends that he was just a witness between one **Bernard Anduku Wendo** who bought a portion of the suit land from **Mathew Sichangi Wafula**.
4. I have considered the Applicant's application as well as the opposition thereto by the Respondent. This is an application for injunction by the Applicant seeking to restrain the Respondent from any further construction of a house on the suit land or interfering with the suit land in any other manner. The first issue for determination in this matter is whether it is the Respondent who is putting up the house on the Applicant's land and whether he has any proprietary interest in the same.
5. There may be no doubt that the Respondent's names are not Richard **Shiundu** as indicated in the pleadings. The Respondent has annexed a copy of his identity card which shows that his names are **Peter Shiundu Barasa**. This is not a major issue at the moment. Names can be corrected at any time by amendment. The main issue is whether he is the one interfering with the suit land. There is evidence in form of a demand letter that the Applicant has previously asked the Respondent to desist from interfering with the suit land. During the hearing of this application, the Respondent conceded that the Applicant has previously caused his arrest over the same subject matter. Whether the Respondent is doing this as an agent of someone else is a matter which will come up during the hearing. What is apparent as at now is that the Respondent is fully in the picture as to what is happening on the ground. If the copy of the agreement which he has annexed to the replying affidavit is anything to go by then the Respondent knows what is happening only that he is trying to evade any injunctive orders being issued.

6. The orders being sought are to restrain not only the Respondent but his servants or agents as well. The Respondent has no proprietary interest in the suit land. This being an application for injunction, the court is obliged to consider whether the Applicant has demonstrated that he has a prima facie case with probability of success. The Applicant has annexed a copy of title deed in his name. He has also annexed a copy of search certificate issued on 21/1/2016 confirming that he is the registered owner of the suit land. There are no any encumberances such as cautions or inhibitions or restrictions. The agreement which the Respondent has annexed to his replying affidavit was allegedly made on 7/5/2015. The purported seller of the half acre is not the Applicant. The agreement does not even purport to have been in respect of the suit land. It is alleged that it was bought from a parcel of land at **Chebukaka Co-operative Society**.

7. The alleged purchaser should have even moved to court to be enjoined as an interested party if he really existed because he must have been made aware of this suit when the Respondent went asking for a copy of sale agreement from him. I find that the Applicant has demonstrated that he has a prima facie case with probability of success. I hereby grant an order of injunction restraining the Respondent, his servants, agents or assigns from further construction of a house standing on the suit land or in any other way from interfering with the suit land until the hearing and determination of this suit. The Applicant shall have costs of this application.

It is so ordered.

Dated, signed and delivered at Kitale on this 30th day of March 2016.

E. OBAGA

JUDGE

Court : Ruling delivered at 2.40 pm in the absence of parties.

Parties can read ruling at the registry.

Court Assistant – Isabellah.

E. OBAGA

JUDGE

30/3/16