



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 52 OF 2016**

**NOEL ENGESHA NJORO ..... APPLICANT**

**VERSUS**

**JULIUS KORINGURA ..... RESPONDENT**

**RULING**

1. The Applicant **Noel Engesha Njoro** filed an application in which she seeks orders of injunction restraining the respondent **Julius Koringura** from interfering with **Plot No. 830 at Zea Settlement Scheme** (suitland). The applicant contends that she is the allottee of the suitland. That the suitland was allocated to her by the Ministry of Lands through the Settlement Fund Trustee.
2. The applicant annexed a letter of offer dated **11/1/2013**. In the letter of offer, she had been asked to pay an outright purchase of **Kshs.39,000/=** within **90 days**. She paid **Kshs.8,000/=** on **12/3/2013** and the balance of **Kshs.33,000/=** was made on **4/10/2013**. The applicant contends that she was shown the boundaries of the plot on the ground. However when she wanted to take possession, she was prevented from doing so by the respondent. The respondent repeated this during the planting season of 2014 and 2015 and that he has ploughed the suitland ready for planting season of 2016. It is on this basis that she prays for injunction to restrain the respondent from going ahead with the planting.
3. The application is opposed by the respondent through a replying affidavit sworn on **14/3/2016** and grounds of opposition filed in court on **29/3/2016**. The respondent contends that the suitland does not exist on the ground. That the suit land was created by hiving off parts of **Plot No. 15, 16 and 17** which belong to him. That if an injunction is granted, it will amount to dispossessing him of his land which he bought in **2001** from the lawful allottees.
4. The respondent further contends that he is the one in possession of what the applicant claims to be her plot and that he has already ploughed, planted and the maize has germinated. He has annexed photographs of maize which has sprouted and a building on the land.
5. I have given due consideration for both the applicant's application and the opposition thereto by the respondent. This is an application for injunction. For one to succeed, he/she has to demonstrate that she has a prima facie case with probability of success. An injunction will not normally be granted, unless it is shown that the injury which the applicant will suffer will not be compensated by damages. Where the court is in doubt, it will decide the application on a balance of convenience.
6. The purpose of an injunction is to prevent injury or preserve a property which is in danger of waste. It cannot be given where what it is intended to prevent has already taken place. In the instant case, the

applicant came to court saying that the respondent had ploughed the suitland and was about to plant. The injunction was therefore sought to prevent the respondent from planting. There is evidence which is not controverted that the respondent has already planted. There are photographs showing maize which has sprouted from the ground. It will therefore be futile to give an injunction to prevent what has already taken place. To do so will be giving orders in vain.

7. Has the applicant demonstrated that she has a prima facie case with probability of success? To answer this, a look at the evidence supplied is necessary. The applicant has annexed a letter of offer from the Settlement Fund Trustee. This offer was accepted by the applicant who paid all the requisite money. There is even a letter from the Land Adjudication and Settlement Office confirming that the applicant is the allottee of the suitland. The respondent contends that the suitland was created in between his properties known as **Plot Nos. 15, 16 and 17**. The respondent has annexed a copy of the area map which shows that the suitland is in between **Plot No. 18 and 17**. The respondent has been in occupation of his three plots which he bought in **2001**. The applicant claims to have been allocated **Plot No. 830** in **2013**. The applicant claims that **Plot No. 830** is supposed to be where the respondent is occupying.

8. The map supplied by the respondent shows that the numbering of the plots in the area followed a certain sequence. The numbers follow each other sequentially. However what is interesting is that **Plot No. 830** fall in between **Plot No. 17 and 18**. This then raises questions as to how **Plot No. 830** came to be in between **Plot No. 17 and 18**. This puzzle can only be unraveled by the officials from the lands office who will explain this strange numbering of plots. They will also say whether the plot actually exists on the ground or it was created later with a view to displace early occupants. At the moment I cannot say that the applicant has demonstrated that she has a prima facie case with probability of success.

9. Will the applicant suffer damage which will not be compensated in damages? I do not think that the applicant will suffer damage which will not be compensated in damages. There is no danger of the suitland being sold by the respondent. None of the parties have obtained title. The respondent is utilizing the portion for farming. If it turns out that the suitland belongs to the applicant and that it actually exists on the ground, the applicant can be compensated in damages.

10. What about the balance of convenience? Even if the application was to be decided on a balance of convenience, the balance of convenience will tilt in favour of the respondent. It is the respondent who is in possession of the suitland. The applicant has not taken possession since the same was allocated to her in **2013**. I therefore find that no injunction can be granted in the circumstances. I dismiss the applicant's application with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this **25th** day of **April, 2016**.

**E. OBAGA**

**JUDGE**

In the presence of Mr. Teti for Respondent and Mr. karani for Mr. Kaosa for Applicant.

Court Assistant Isabellah.

**E. OBAGA**

**JUDGE**

**25/04/2016**