



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 301 OF 2016

NAZIRALI MUSSA HAJI.....PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF NAROK.....DEFENDANT

RULING

(Application for injunction; application not opposed by defendant; plaintiff owning certain land and proceeding with construction; defendant stopping construction on the basis that there is an ownership dispute; no basis for defendant to do so as it does not have mandate to hear ownership disputes; application for injunction allowed)

1. This suit was commenced through a plaint filed on 1 August 2016. It is pleaded that the plaintiff is the registered owner of the land parcel described as Narok Township/84 and that he holds a certificate of lease. It is pleaded that in the month of July 2016, the plaintiff purposed to develop the said land by building a multi storied building. He prepared the architectural plans and presented them to the defendant's office and they were approved. He then paid the required fees. Despite this, on 26 July 2016, the defendant directed the plaintiff to stop any construction until an alleged dispute is determined. The nature of the dispute was never disclosed by the defendant. It is the view of the plaintiff that the defendant's conduct is malicious, illegal, baseless and an infraction on the plaintiff's legitimate expectation. It is his view that if there is a claim of ownership by a third party, the defendant has no jurisdiction to determine such dispute. In the suit, the plaintiff has asked for the following orders :-

(a) A declaration that the parcel of land known as Narok/Township/84 is the property of the plaintiff and the defendant has no jurisdiction to determine any ownership dispute between the plaintiff and any third party.

(b) A permanent injunction restraining the defendant, its servants, officers, agents, workers or any other person working at the defendant's behest from interfering with the plaintiff's quiet occupation and use of the property.

(c) Costs of the suit.

2. Together with the plaint, the plaintiff filed an application under Order 40 Rules 1, 2, and 3 of the Civil Procedure Rules, seeking orders of injunction to restrain the defendant from interfering with the construction and quiet possession of the plaintiff of the suit land. Despite being served, the defendant has not entered appearance and did not file any response to the said application.

3. I have considered the application. The only material tendered is that of the plaintiff. I have seen a Certificate of Lease issued in the name of the plaintiff by the predecessor of the defendant, the County Council of Narok. The lease was issued on 25 May 2007. Under Section 26 of the Land Registration Act, 2012, the display of a lease is prima facie evidence of ownership. I have also seen the building plans that were approved by the defendant. I have noted the order issued by the defendant informing the plaintiff to stop any construction until "the dispute is solved". It is not clear what exactly this dispute is. But if there is any person claiming to be entitled to the suit land, they are of course free to present their case for determination. I do not see how the defendant can purport to have jurisdiction to determine land ownership disputes. I am therefore of the view that the plaintiff has demonstrated a prima facie case with a probability of success and is entitled to the order of injunction sought.

4. I allow the application. I hereby order the defendant not to interfere with the ongoing construction on the suit land if the reason is that there is a dispute over ownership of the land. The plaintiff shall also have the costs of this application.

5. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 20th day of September 2016.

MUNYAO SILA

JUDGE

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In presence of: -

Ms. Alwala holding brief for Mr. Githui for applicant

No appearance for respondent

C/Asst: Janet

MUNYAO SILA

JUDGE

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