



REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT AT ISIOLO

ELC CASE NO. 013 OF 2021

GURACHA TADI JALDO.....PLAINTIFF

-VERSUS-

HALKANO GALGALO GUYO.....DEFENDANT

RULING

1. This application is dated 16th June, 2021 and seeks the following prayers

1. THAT this application be certified urgent and service of the same upon the respondent be dispensed with in the first instance.
2. THAT the respondent be and is hereby by way of interim injunction be restricted, whether by himself or by his servants, agents, employees, invitees and or otherwise whatsoever from disposing, and or evicting, or in any manner dealing, and or wasting, and or partitioning, and or alienating, and or erecting, and/or any constructing of any structure on the suit property land Reference Number MARSABIT/MOUNTAIN/535 pending hearing and determination of the instant application.
3. THAT the Defendant/Respondent be and is hereby by way of interim injunction be restrained. Whether by himself or by his servants, agents, employees, invitees and or otherwise whatsoever from disposing, and or evicting, or in any manner dealing, and or wasting, and or partitioning, and or alienating, and or erecting, and/or any constructing of any structure on the suit property land Reference Number **MARSABIT/MOUNTAIN/535** pending hearing and determination of the of this suit.
4. THAT OCS MARSABIT Police Station to ensure compliance of this Orders
5. THAT costs of this application be provided for.

2. The application is supported by the affidavit of Guracha Tadi Jaldo, the applicant, and has the following grounds:

- a) THAT on the 15th day of June 2021 at about 1.1.00 a.m. the Respondent in Company of his agents without any colour of right or notice or any justifiable cause trespassed to the Applicant's residential home situated on the suit land MARSABIT/MOUNTAIN/535 assaulted him and maliciously destroyed part of the house and threatened to evict him.
- b) THAT the Respondent further threatened to evict and dispose off the suit land to a third party with total disregard of the Applicants Interest.
- c) THAT the Applicant will suffer irreparably if this application is not certified urgent as the he faces destitution unless an order is issued by this Honourable Court Prohibiting further dealings and disposition of the suit property aforesaid pending the hearing and determination of this application and suit.
- d) THAT the Respondent temporarily entered into the suit property MARSABIT/MOUNTAIN/535 AND DESTROYED PART OF the Applicant's residential house constructed thereon with clear intention of evicting the Applicant from the suit land with total disregard of the applicants; interest.

3. On 22nd November 2021, advocate Kitheka was holding brief for advocate Misati for the respondent. He told the court that Mr. Misati was praying for 14 days to file and exchange written submissions.

4. The following orders were issued:

- a) Applicants advocate granted 2 days to file and exchange written submissions and the respondent to do so within 14 days after

receipt of the applicant's written submissions

b) Applicant's advocate to serve the orders issued by the court today upon the defendant's advocate within 7 days of today

c) Directions on 14/2/2022

5. On 14/2/2022, the parties did not come to court. There is no evidence on the court record to indicate the defendant was aware of today's date.

6. On 22nd June, 2021 vide a ruling delivered at Chuka, the following orders had been issued:

a) Prayer 2 is granted for only 14 days pending hearing of the application by the ELC Court at Meru on July 6th, 2021

b) The applicant is directed to properly serve the application upon the respondent within 7 days of today.

7. On 4/10/2021, Hon Justice C. K Nzili, sitting at Meru, directed that this matter be transferred to Isiolo. Hence the orders issued by this court as alluded to earlier in this ruling

8. In my view the parties have failed to diligently prosecute this application. The applicant has veritably been indolent.

9. The following orders are issued:

a) This application is dismissed with no order as to costs.

b) The applicant is directed to fully comply with Order 11, CPR within 30 days of today and the respondent is to do so within 30 days after receipt of the applicant's compliance documents.

c) As the parties are not in court, Notices shall be issued by the Court informing the parties of the contents of the orders issued by the court today.

d) This suit will be heard on 16/5/2022.

WRITTEN AND DELIVERED IN OPEN COURT AT ISIOLO THIS 14TH DAY OF FEBRUARY, 2022 IN THE PRESENCE OF:

Court Assistant: Balozi

Parties not in court.

HON. JUSTICE P. M. NJORGE

JUDGE