

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

LAND CASE NO. 120 OF 2013

APOLLO AMBUTSI SHIKANGA:.....PLAINTIFF

VERSUS

JOMO GODWIN KORORIA:.....DEFENDANT

RULING

The applicant brought a notice of motion seeking injunction orders against the respondent restraining him from interfering with the applicant's parcel of land known as Kapkoi/Mabonde/Block 1 (ex-prison)229. The applicant obtained a temporary injunction ex-parte. When the application came up for hearing inter-partes, the parties indicated that they had entered into negotiations. They were given time to negotiate with a view of settling the matter.

When the negotiations failed, the parties took a hearing date for the hearing of the application. At the hearing of the application, the defendant/Respondent who was aware of the hearing date did not turn up. He had also not filed any grounds of opposition or replying affidavit to the application.

Mr. Ingosi for the applicant argued that the applicant is the sole registered owner of land parcel No. Kapkoi/Mabonde/Block 1 Ex-prison)229 hereinafter referred to as the suit land. Around September 2013, the respondent trespassed into the suit property and started excavating sand from the land without consent of the applicant. The applicant argues that the respondent is degrading the land by scoping soil from therein and that is why he seeks an injunction against the respondent.

The applicant annexed a copy of title deed which shows that he is the sole proprietor of the suit land. He also annexed copies of photographs showing mounds of soil excavated on the said land with huge pits open. The respondent has not filed anything to controvert the averments of the applicant. The applicant has demonstrated that he is the sole registered owner of the suit land. I find that the applicant has demonstrated a prima facie case with a probability of success. He is entitled to the injunction orders sought. I allow the application with the result that an injunction is issued against the respondent restraining him from interfering with the suit land until the hearing and determination of this suit. The respondent shall pay the costs of this application.

It is so ordered.

Dated, signed and delivered at Kitale on this 20th day of January,2014.

E. OBAGA

JUDGE

In the presence of

Mr. Ingosi for applicant's

Court clerk Kassachoon.

E. OBAGA

JUDGE