



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

ELC NO. 53 OF 2013

PAUL LUSAME NYONGESA.....PLAINTIFF

VERSUS

1. MESHACK BARASA

2. GEORGE SITUMA.....DEFENDANT

R U L I N G

1. The applicant Paul Lusame Nyongesa brought a notice of motion seeking injunction orders against the defendant/respondents whom he claims have invaded one acre out of one and half acre which he bought in 2009.
2. The applicant contends that he is the owner of 1.5 acres forming part of Plot no. 395 situated at Kolongolo area of Trans – Nzoia. The applicant annexed a copy of sale agreement dated 28/2/2009 as proof of ownership. He also annexed a copy of transfer of 1½ acres. The transfer was done by Kolongolo Farmers Co-operative Society Limited.
3. The first respondent swore a replying affidavit with authority of the second respondents in which they have opposed the applicant's application. The respondents contend that they each bought half an acre of land from the applicant's father Christopher Wanyonyi Lusame. They fully paid for their respective portions and took possession. When they planted on their portions, the applicant came and uprooted some of the crops. The applicants contend that the applicant's application is an abuse of the process of court.
4. The applicants contend that the family of the applicants held a meeting in which the applicant's family agreed to give each of the respondents their respective portions which they had bought from the applicant's father. The respondents annexed copies of their respective sale agreements as well as the agreement by the applicant's family and an acknowledgement by the applicant which shows that he had agreed to take half an acre out of plot 395.
5. I have carefully gone through the application by the applicant as well as the replying affidavit of the respondents. For an injunction to issue, an applicant must either demonstrate that he has a prima facie case with a probability of success or demonstrate that if an injunction is not granted, he will suffer irreparable loss which cannot be compensated by damages. However if the court is in doubt it will decide the application on a balance of convenience.
6. The applicant herein has annexed a copy of an agreement which shows that he bought one acre from Christopher Wanyonyi on 28/2/2009. The applicant went on to annex a copy of transfer for 1½ acres allegedly made by Kolongolo Farmers Cooperative Society Limited. What the

applicant has not explained is why he got a transfer of 1 ½ acres if he had bought one acre. The applicant did not also disclose that the seller was his father.

7. It is very doubtful that the applicant's father would sell 1 ½ acres to his son in 2009 and sell the same land to two other people two years later. The documents annexed by the respondents bear the stamp of Kolongolo Framers Co-operative Society, whereas those of the applicant do not bear such stamp though they are said to be from the same society. I do not think that the applicant has demonstrated that he has a prima facie case with a probability of success. If the applicant finally succeeds, he will always be compensated in monetary terms.

8. The respondents are said to be in possession of their half acre each. The balance of convenience tilts against the applicant. His application for injunction is dismissed with costs to the respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this 26th day of February, 2014.

E. OBAGA,

JUDGE

COURT: Ruling delivered in open court at 9.44 a.m. In the absence of parties. Parties can read the same at the registry. Court Clerk Kassachoon.

E. OBAGA,

JUDGE

26/2/2014