



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

ENVIRONMENT & LAND CASE NO. 17 OF 2013

EMILY SIKUKU MOMANYI PLAINTIFF

VERSUS

ROTINO MOIBEN LOTIOLO DEFENDANT

RULING

1. By notice of motion dated 18/2/2013, the applicant moved the court for an injunction order against the defendant/respondent from interfering with her plot No. 439 at Chepchoina Settlement Scheme Phase 1.
2. The applicant contends that she was allotted the plot in issue on 22/8/2008 by the Director of Land Adjudication and Settlement. She met the conditions in the letter of offer by first making a 10% deposit required and thereafter cleared the balance.
3. The plot in issue was duly documented in her name. When the applicant attempted to make use of her land, the respondent forcefully prevented her from doing so. The respondent in fact assaulted the applicant. The respondent was charged for assault vide criminal case No. 610 of 2011 at Kitale Law Courts.
4. The respondent has since prevented the applicant from taking possession of her land and has since been ploughing it contending that a woman is not allowed to own land.
5. The respondent has opposed the application through a replying affidavit sworn on 10/4/2013. The respondent contends that the plot in issue was allotted to one Joseph N. Kamokol before the applicant herein was given a letter of offer.
6. The respondent further contends that he has leased the suit land from the said Joseph N. Kamokol. The respondent has annexed two copies of payment receipts which show that one Joseph N. Kamokol paid the amount in respect of Plot No. 438. The respondent contends that Plot No. 438 and 439 refer to the same plot on the ground.
7. I have carefully considered the applicant's application as well as the opposition to the same by the applicant. The principles upon which an interlocutory injunction can be granted are now well settled. First an applicant has to demonstrate that he has a prima facie case with a probability of success. Secondly an injunction will not normally be issued unless the applicant might otherwise suffer damage which may not be compensated. Thirdly if the court is in doubt, it will decide the application on a balance of convenience.
8. In the present case, the respondent claims that he is a lessee of the suit land from one Joseph N. Kamokol. The respondent also contends that Plot No. 438 is the same as Plot No. 439. The respondent has not annexed any document to show that the position is as he alleges. He has not even attempted to have the said Joseph N. Kamokol to swear an affidavit to confirm his allegations. The respondent is not the owner of either Plot No. 438 or Plot No. 439.
9. The applicant has demonstrated that she is the allottee of Plot No.439 at Chepchoina Settlement

Scheme Phase 1. She has duly paid for it. She paid the deposit of 10% within the 90 days given in the letter of offer and the balance cleared later. I find that the applicant has demonstrated that she has prima facie case with probability of success.

10. The respondent is not staying on the land. He goes to the land to plough and plant during planting season. He cannot therefore claim that he is in possession of the land and that if an injunction is granted, it will amount to grant of mandatory injunction which will have him removed from the land.
11. There is no need for me to consider the other two principles. The balance of convenience cannot come in. The respondent has no right to prevent the applicant from accessing her land.
12. I allow the motion of 18/2/2013. The respondent is injuncted from interfering in any manner with the applicant's land Plot No. 439 at Chepchoina Settlement Scheme Phase 1. The respondent shall pay the applicant costs of the motion.

It is so ordered.

Dated, signed and delivered at Kitale on this 24th day of March, 2014.

E. OBAGA,

JUDGE

In the presence of Mr Samba for defendant and Mr Chebii for plaintiff. Court Clerk – Kassachoon.

E. OBAGA,

JUDGE

24/3/2014