

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 78 OF 2013

ALBERT ALEXANDER AGGREY EKIRAPA PLAINTIFF

VERSUS

ISAAC MUCHILWA DEFENDANT

RULING

1. The applicant herein Albert Alexander Aggrey Ekirapa brought a notice of motion dated 30th February, 2014 in which he sought an order of injunction against the defendant restraining him, his agents, servants and/or any other person acting through him or claiming interest through him from cultivating, leasing, trespassing on, selling, claiming, occupying and or dealing in any manner with land parcel No. Trans-Nzoia/Gidea/29.
2. The defendant who was duly served neither entered appearance nor filed any replying affidavit or grounds of opposition to the application. The applicant contends that he is the proprietor of the suit land which measures 26.6 hectares. In the year 2012, the defendant/respondent moved into the property and cultivated 10 acres. He planted and harvested. In the year 2013 he did the same thing. The applicant therefore prays for an injunction seeking to stop the respondent from cultivating the land until determination of this suit.
3. I have looked at the application which is not opposed. The applicant has demonstrated that he is the registered owner of the land. The respondent who has cultivated the applicant's land on two previous occasions has no business doing so for a third time. I find that the applicant has demonstrated that he has a prima facie case with probability of success. I allow the application with the result that an injunction is issued against the defendant in terms of prayer (3) of the motion. The applicant shall also have the costs of this application.

It is so ordered.

Dated, signed and delivered at Kitale on this 30th day of April, 2014.

E. OBAGA

JUDGE

COURT: Ruling delivered in the absence of the applicant who was aware of today's date. Court clerk – Kassachoon.

E. OBAGA,

JUDGE

30/4/2014