



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 140 OF 2013**

**MARK JOSEPH SIMIYU KISEMBE**

**SAMUEL ODUORI CHUMA**

**MICHAEL FRANCIS CHEMONGES K.....PLAINTIFFS**

**VERSUS**

**MICHAEL KIMTAI**

**DAVID SITUMA WEKESA.....DEFENDANTS**

**R U L I N G**

1. The applicant David Situma Wekesa is the 2nd defendant in this case. The applicant brought a notice of motion dated 17th February, 2014 in which he seeks an injunction restraining the respondents from in any way interfering with LR. NO. Kitale Municipality Block 10/50(Suit land). The applicant contends that he is the registered owner of the suit land and that the respondents have without any colour of right moved into his property and have ploughed it and are further interfering with the beacons.
2. The application is supported by the applicant's affidavit sworn on 17th February, 2014 as well as a further affidavit of Michael Kimutai Ndiwa the first defendant herein. The applicant has annexed a copy of certificate of lease issued on 22/7/2013.
3. In the supplementary affidavit sworn by Michael Kimutai Ndiwa, the deponent depones that he is the one who sold the suit land to the applicant. Annexed to the affidavit is a sale agreement between Michael Kimutai Ndiwa and the applicant. The sale agreement is dated 29/8/2013.
4. The application is opposed based on a replying affidavit sworn by Mark Joseph Simiyu Kisenbe on 28/2/2014. The respondents contend that they have been in occupation of the suit land since 1991, have ploughed and are residing on it. The respondents also adopted the supporting affidavit to the application filed on 16/10/2013 as well as a further affidavit in support of the same application.
5. I have carefully gone through the applicant's application as well as the response by the respondents. The applicant is seeking an injunction based on the strength of a certificate of lease issued on 22/7/2013. This certificate is in respect of LR. No. Kitale Municipality Block 10/50. The respondents are contending that their Plot No. is Kitale Municipality Block 10/44. What is interesting is that whereas the two parties claim to be owning separate titles, the land they are

- each claiming is the same on the ground.
6. The applicant contends that he has confirmed from the Lands Office that records in respect of Kitale Municipality Block 40/44 do not exist. The principles for grant of an injunction are now settled. An applicant must among other conditions demonstrate that he has a prima facie case with a probability of success.
  7. In the present case the applicant contends that he bought the suit land from the first defendant on 29/8/2013. What is interesting is that he has annexed a copy of certificate of lease issued on 22/7/2013. How could it have been possible for a person to obtain a lease in his name before he bought the land? There is something seriously wrong in this case. The respondents have annexed documents showing that they applied for approvals to build from the County Government and obtained the same. The approvals were made on the basis of title documents produced. It is now surprising that the same documents cannot be traced at the Lands Office. On the basis of the observations made in respect of the applicant's documents, I find that the applicant has not demonstrated that he has a prima facie case with probability of success. The applicant's application fails and it is hereby dismissed with costs to the respondents. The interim injunction orders earlier given are hereby discharged.

It is so ordered.

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

**E. OBAGA,**

**JUDGE**

In the presence of Mr Karani for Mr Ingosi for respondents and M/S Nyakibia for applicants.

Court Clerk – Kassachoon.

**E. OBAGA,**

**JUDGE**

**30/4/2014**