

REPUBLIC OF KENYA

High Court at Kitale

Civil Suit 82 of 2012

DAVID KARANI LUSENO PLAINTIFF

VERSUS

ROBERT KIDAHA MUKAGATI DEFENDANT

RULING

The Applicant through Notice of Motion dated 17/04/2013 sought an order for temporary injunction restraining the Respondent, his servants and or agents from trespassing upon, ploughing, planting or in any way interfering with three (3) acres on Land Parcel No. 191, Kapkoi Settlement Scheme pending hearing of the application inter-partes. The Applicant was granted a temporary injunction ex-parte on 18/04/2013. The application came up for hearing inter-partes on 02/05/2013. The Applicant had deponed in the Supporting Affidavit that he had intended to sell three acres to the Defendant but that the Defendant breached the agreement and that the Defendant had started damaging the property on the land and demolished his house where his servant used to reside. The Applicant had also contended that he had leased three acres out of the suit land to one Saphan Okongo Oriedo who had ploughed ready for planting but that the Defendant/Respondent went ahead to plant on the ploughed land.

The application was opposed by the Respondent through Replying Affidavit sworn on 30th April, 2013 where the Respondent contends that he bought 5.3 acres from the Applicant in 2000 and has fully paid for the land which he is occupying. He contends that if the application is allowed, it will amount to evicting him and putting into occupation one Saphan Okongo Oriedo.

I have gone through the application as well as the Replying Affidavit and the submissions by the Counsel for the parties. The interlocutory injunction was granted on insufficient material information. After the inter-partes hearing, it has emerged that the Respondent bought 5.3 acres from the Plaintiff/Applicant and that he has fully paid for the 5.3 acres. The Applicant's claim that he had intended to sell three acres to the Respondent who failed to pay the agreed sum is therefore not true. It also emerged during the hearing that the Respondent is the one in possession of the land and as such granting the injunction prayed for will amount to evicting the Respondent from the land he is occupying and utilizing. I find that the orders sought were given based on material non disclosure of the facts as they are on the ground. I find that the application cannot stand. I dismiss the same with costs to the Respondent. The interim orders given herein on 18/04/2013 are hereby discharged.

It is so ordered.

Dated, signed and delivered in Open Court on this 21st day of May, 2013.

**E. OBAGA
JUDGE**

In the presence of Mr. Kiarie for the Defendant.

Court Clerk: Joan.

E. OBAGA

JUDGE
21/05/2013