



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CIVIL SUIT NO. 83 OF 2010

MOSES SAUL KHAMATI PLAINTIFF/APPLICANT
VERSUS
SEBIO JUMA KWEYU 1ST DEFENDANT/RESPONDENT
MUMIAS SUGAR CO. LTD. 2ND DEFENDANT/RESPONDENT

R U L I N G

1. I have before me a Chamber Summons dated 21.6.2010. It is premised on the Provisions of Order 39 Rule 1 (a) 1 (2) and 2 (a) of the Civil Procedure Rules. An injunction is sought to restrain the Defendants/Respondents from **“entering into a cane farming contract in respect of Land Parcel No. S/WANGA/BUKAYA/1221”**. It is the Applicant’s case that he is the registered proprietor of that parcel of land and that the 1st Respondent without any colour of right has purported to begin negotiations with the 2nd Defendant to hire the land for sugar cane planting.
2. In a Replying Affidavit sworn on an unclear date but filed on 26.7.2010, the case for the 1st Respondent is that the Application is bad in law, and an abuse of the process of the court. That whereas he has a contract with the 2nd Defendant, the said contract is limited to the use of plot Nos. 3 and 22 at Bukaya and not the Applicant’s parcel of land. Further that, the contracts with the 2nd Defendant have already been executed, and the land ploughed ready for planting and so the prayers sought have been overtaken by events.
3. The Respondent has also urged the point that he has leased land from one Alexander Johnny Obonyo (deceased) and that his family is aware of the leasehold interest. That the Applicant has no lawful claim to the land parcels belonging to that family and so his claim is unmerited.
4. On my part, the matter portends no difficulty; he who alleges must prove. In the interlocutory stage however, the Applicant must establish a **prima facie** case with a probability of success. What is before me however, is nothing close to that. The Affidavit in support, short and brief as it is, raises no issue that should warrant grant of the orders sought. If the Respondents have a contract between them, what is the interest of the Applicant in it? He argues that his land parcel No. 1221 may be the land upon which the contract for cane farming may be premised. He gives no evidence of any kind to support such a serious issue. He has also not chosen to respond to the fact that the Respondent has exhibited three Cane Farming Contracts between himself and the 2nd Defendant.
5. The contracts refer to plots Nos. 206A and 206B. He has also exhibited payment schedules that refer to Plot No. 9 and Plot No. 10. The Applicant has not stated what all those documents have to do with his land parcel No.1221.
6. In any event, I agree with the Respondent that once the contracts were executed as they clearly were, then an injunction in the nature of the one sought by the Applicant cannot be granted.
7. The Applicant has also failed to demonstrate what damage he stands to suffer if the injunction is not granted and so sadly, on the whole, the Application dated 21.6.2010 is completely misguided. It is dismissed with costs to the Respondent.
8. Orders accordingly.

Delivered, Dated and signed at Kakamega this 13th day of October, 2010

ISAAC LENAOLA
JUDGE