



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 19 of 2006

JOHN K. LOKORIO.....
.....PLAINTIFF

VERSUS

LEONARD WANYAMA AND 8 OTHERS.....
.....DEFENDANTS

R U L I N G

The Plaintiff in this suit **John K. Lokorio** filed a suit and simultaneously sought for interim orders by way of a Chamber Summons dated 24th January, 2006.

The Plaintiff sought for orders restraining the 1st to 9th defendants from entering, ploughing, wasting, alienating, using or from interfering with his peaceful and quiet enjoyment of all that piece of land known as Nakuru/Ngongoreri/1 measuring 23.5 Hectares or there about pending the hearing and determination of his suit.

The grounds upon which this application is predicated are well stipulated in the body of the application and were more specifically expounded in the Supporting Affidavit. I wish to summarize the gist of the matters deponed to in the Supporting Affidavit.

The Plaintiff is the registered owner of the land known as Nakuru/Ngongeri/1 measuring 23.5 Hectares and annexes a copy of the Title Deed dated 5th June, 2000. The Plaintiff alleges that the sometimes in the year 2005, the defendants unlawfully entered the suit land and started ploughing the same and erecting some temporary structures on the said land thus hampering and interfering with his peaceful occupation of the suit premises.

The defendants filed a replying Affidavit on 15th February, 2006, sworn by **Leonard Wanyama** the 1st Defendant who claims to have the authority of the other defendants. The defendants allege that they were shocked to learn that “**the Appellant has fraudulently registered himself as the owner of the land.**” The defendants claim that the land was allocated to them alongside other squatters numbering 165 in 1995, by the Former President of the Country they having been landless and former employees of the said Farm Ngongeri Farm. They claim to have taken a small portion of land each in 1997 where they have been cultivating. They accuse the plaintiff who was then working as the Comptroller of State House of colluding with the then Commissioner of Lands one **Sammy Muita** and misusing their respective offices to take over and subdivide the land amongst the two of them each getting 23.5 hectares.

The respondent denied that the appellants have taken possession of the suit premises but merely intends to evict the defendants before the dispute is determined.

The Plaintiff is the Registered absolute proprietor of the suit premises. The plaintiff has exhibited a copy of the Title Deed to prove ownership which was issued to him on 5th June, 2000.

The circumstances of how the applicant acquired this title are not given by the applicant. Section 30 of the Registered Lands Act provides for what are recognized overriding interests over the rights of an absolute proprietor.

According to Section 30:-

“Unless the contrary is expressed in the register, all registered land shall be subject to sum of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register:-

(a) ...

(b) the rights of a person in possession or actual occupation of land to which he is entitled in right only of such possession or occupation, save where inquiry is made of such person and the names are not disclosed.”

The Defendants have pleaded misrepresentation, fraud and misuse of office on the part of the plaintiff in the acquisition of the said Title. They have further alleged that the plaintiff is not in occupation of the suit premises and that it is they the defendants who have been in occupation. The Plaintiff has not made any response to the said allegations. Although the Plaintiff is an absolute owner of the property by virtue of the Title, the Title of such an owner can only be subject to challenge on the grounds of fraud or misrepresentation to which the owner is proved to be a party.

At this interlocutory stage this court takes judicial notice of the fact that land is a very sensitive issue especially in the circumstances such as in this case. For the balance of convenience, I wish to adjourn this matter until the matter is fully heard by way of oral evidence in regard to allegations raised by the defendants.

I decline to grant the restraining orders and direct that the status quo be maintained and the matter be given a priority hearing date in the registry for the full hearing and determination of the issues in controversy.

Costs of this application shall be in the cause.

It is so ordered.

DATED AND DELIVERED ON THIS 5TH DAY MAY, 2006

MARTHA KOOME

JUDGE