



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 49 OF 2020

JACKSON C. KOBON.....PLAINTIFF

VERSUS

SAMWEL CHUMA.....1ST DEFENDANT

PERES TALLAM.....2ND DEFENDANT

DENIS OKWANYO.....3RD DEFENDANT

WILDON KIPKOECH.....4TH DEFENDANT

BENJAMIN KIPRUTO.....5TH DEFENDANT

MIRIAM CHERWON.....6TH DEFENDANT

ROBERT AURA.....7TH DEFENDANT

RULING

1. The application dated 11/8/2020 has been brought under Section 1A, 1B, 3, 3A and 63(e) of the Civil Procedure Act and Order 40 Rule 1 and 2, Order 51 Rule 1 and 10 of the Civil Procedure Rules. The plaintiff seeks the following orders:-

(a) ...spent

(b) That a temporary injunction do issue restraining the defendants/respondents, their servants, agents and/or assignees from in any way dealing and/or interfering with the plaintiff's quiet possession, use and/or occupation, constructing, subdividing, wasting and/or to do any act that is inconsistent with the plaintiff's right as the legal owner of all that parcel of land known as KITALE MUNICIPALITY BLOCK/13/206 measuring approximately 3.2 Ha pending hearing and determination of this application inter-partes and thereafter the main suit.

(c) That a temporary injunction do issue restraining the defendants/respondents, their servants, agents and/or assignees from in any way dealing and/or interfering with the plaintiff's quiet possession, use and/or occupation, constructing, subdividing, wasting and/or to do any act that is inconsistent with the plaintiff's right as the legal owner of all that parcel of land known as KITALE MUNICIPALITY BLOCK/13/206 measuring approximately 3.2 Ha pending hearing and determination of this suit.

(d) The O.C.S. Kitale Police Station do assist in enforcement and ensure compliance of this order.

(e) The costs be provided for.

2. The application is supported by the affidavit sworn by the plaintiff on 11/8/2020. The grounds upon which the said application is made are that the plaintiff is the registered owner of the suit land; that the defendants have illegally and without any justification laid claim over the suit land and commenced construction thereon and that the plaintiff stands to suffer great loss and damage in the event of continued interference with the suit land. The plaintiff claims that he took immediate possession of the suit land upon allocation in 1998, and has retained such peaceful possession, and he was thus surprised to see the defendants claim it and trespass onto it. The plaintiff does not have a

lease over the suit property in his name but he avers that the lease in his name is in the process of being prepared. He has reported the invasion to the police but he reveals nothing that transpired after that report.

3. The replying affidavit of **Samwel Oduor Chumba** the 1st defendant was filed on **27/11/2020** on behalf of all the respondents save the 5th. He deposes that there is no lease issued in the applicant's name; that the Part Development Plan exhibited by the plaintiff is not authentic; that the defendants hold letters of allotment to certain unsurveyed plots which in aggregate measure only **0.1700** of a hectare while the applicant's letter of allotment exhibited is for an unsurveyed plot measuring approximately **3.25 hectares**; that the land claimed by the plaintiff overlaps the defendants' plots on the ground; he compares the alleged payments required for each of the respondents' plots (**Kshs. 22,480**) with the alleged payment required of the applicant's plot (**Kshs. 21,970**) despite the massive difference in their approximate acreage and expresses surprise at the discrepancy; he further states that the respondents' letters of allotment were issued earlier than the applicant's. It is averred that the respondents took possession of their plots in the year **1996** and that an order of injunction per chance issued would have the effect of a mandatory injunction against them.

4. The defendants filed their written submissions on **12/1/2021**. The plaintiff filed submissions dated **6/1/2021**.

5. The issues arising in the instant application is whether an injunction should issue against the respondents as sought by the applicant. The validity or authenticity of the documents exhibited by the parties can not be decided by this court at this interlocutory instance. However I note that all the parties are at par at the present moment, in so far as they are only armed with purported letters of allotment and part development plans which only the relevant issuing offices and official records can verify or disclaim.

6. I find that in the circumstances of this case the court is not in a position to verify that the applicant has a *prima facie* case on the basis of the material on the record. I also do not find that there is any evidence that the applicant would suffer loss that can not be compensated by way of damages. This is not to state that the defendants have proved any better standing in comparison to the plaintiff at the present stage of the proceedings.

7. However the court is not oblivious of the risk of possible change in the nature of the land by way of wasting or development by the respondents in the pendency of this suit.

8. In the circumstances and since this court has observed that none of the parties' position is better than the others' at the moment, both having presented unproved documents relating to the allocation and planning stages of acquisition of land, which need to be tested by way of a hearing, it is necessary that the land be preserved in the state it is in pending the hearing and determination of the main suit.

9. Consequently I hereby order that the current *status quo* existing as at the date of the issuance of this order shall be maintained by both the plaintiff and the defendants pending the hearing and determination of the instant suit. In other words none of the parties shall interfere with the suit land till the hearing and determination of the suit.

10. Further, the plaintiff shall comply with the rules within the next **14 days** and the defendant shall comply with the rules within **14 days** of the last date on which the plaintiff's compliance is due and this matter shall be listed for a mention for fixing a hearing date on **10/3/2021**.

It is so ordered.

Dated, signed and delivered at Kitale via electronic mail on this 26th day of January, 2021.

MWANGI NJOROGI

JUDGE, ELC, KITALE.