

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC NO. 71 OF 2020 (O.S)

JOHN MUIYURO KAMAU

(FOR AND ON BEHALF OF THE CATHOLIC DIOCESS OF KITALE)....PLAINTIFF

VERSUS

SOLMAT ENTERPRISES OF KITALE.....DEFENDANT

RULING

1. By a notice of motion dated 26/11/2020 and filed on 30/11/2020, brought under **Order 40 Rules 1 & 2, Order 5 Rule 17, Order 51 Rule 1** of the **Civil Procedure Rules** and **Sections 1A, 1B, 3, 3A and 63(e)** of the **Civil Procedure Act**. The applicant/plaintiff seeks the following orders:

(1) ...spent

(2) That the applicant be granted leave to serve pleadings in this matter on the respondent by way of substituted service by way of registered post vide its last known address.

(3) That pending *inter partes* hearing of this application, an order of temporary injunction do issue to prevent the respondent, its agents, servants and/or assigns from selling, charging, developing, transferring, leasing, trespassing onto and/or in any other manner dealing with all that parcel of land known as 2116/250/SEC 11 also known as LR No. KITALE MUNICIPALITY BLOCK/3/333.

(4) That pending the hearing and determination of this case, the Land Registrar, Trans-Nzoia County be restrained from in any manner dealing with the register of all that parcel of land known as 2116/250/SEC 11 also known as LR No. KITALE MUNICIPALITY BLOCK/3/333.

(5) That in the alternative to prayers (3) and (4) above, there be an order of *status quo* on both the ground and the register of all that parcel of land known as 2116/250/SEC 11 also known as LR No. KITALE MUNICIPALITY BLOCK/3/333 pending the hearing and determination of the originating summons.

(6) That costs of this application be in the cause.

2. The application is supported by the affidavit of the plaintiff sworn on 26/11/2020. The application is grounded on the following grounds: that the applicant purchased the suit land but failed in his efforts to secure the directors of the respondent to effect a transfer into his name; that he now claims the land by way of adverse possession, that he can not trace the directors as at present and therefore the application has been rendered necessary by the said circumstances.

3. The application, naturally in the circumstances is unopposed. I find no reason why orders of substituted service should not issue in the circumstances described by the plaintiff's supporting affidavit. I also find no grounds upon which to decline the application for injunction sought in the application.

4. Consequently I find that the application dated 26/11/2020 has merit and I grant it in terms of **Prayers No. (2), (4) and (5)** thereof. In granting the orders I note that there are two deferent sets of addresses apparent on the face of the documents provided by the applicant and he must satisfy this court at the next relevant stage in these proceedings as to proper service as ordered upon the defendant through both those addresses. An affidavit of service shall be filed as soon as practicable. This matter shall be mentioned on 16/2/2021 to ascertain compliance.

It is so ordered.

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

MWANGI NJOROGE

JUDGE, ELC, KITALE.