

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 7 OF 2021

PORTSMOUTH HOLDINGS LTD.....PLAINTIFF

VERSUS

KENYA RAILWAYS CORPORATION..... DEFENDANT

RULING

1. The plaintiff's application dated 4/2/2021 seeks an interim injunction to restrain the defendant from interfering in any way with all that parcel of land known as **LR 2116/414- Kitale Municipality** on the basis that the title thereto is held by the plaintiff and the defendant has no right to meddle with the property.
2. Notwithstanding that title and purportedly without notice the defendant has allegedly trespassed on the suit land and destroyed almost all the improvements thereon and is intent on fencing off the suit property to deny the plaintiff access thereto.
3. I have perused the court file and found no replying affidavit filed on behalf of the respondent in respect of the instant application. However, there is no affidavit of service regarding the present application. This court can not therefore determine whether it was served and subsequently ignored by the respondent or not; even the applicant's submissions do not reveal whether service was effected or not.
4. Service of process is crucial. Effective service gives due process its meaning, otherwise many parties risk being condemned unheard even when they did not know of proceeding filed against them. The law requires adequate service of process. Therefore when a court has ordered a party to serve process on another party it is not proper for that party so ordered to leave the court guessing whether the service of the application has been effected or not.
5. This court, being aware of the seriousness of granting orders against any party that has not been served in accordance with its orders should not grant any prayers unless the application has been proved to have been served.
6. As the application has not been demonstrated to have been served on the respondent in accordance with the orders made on 11/2/2021, it is hereby declined with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI VIA ELECTRONIC MAIL ON THIS 17TH DAY OF MARCH, 2021.

MWANGI NJOROGE

JUDGE, ELC, KITALE.