



**REPUBLIC OF KENYA**

**IN THE LAND AND ENVIRONMENT COURT**

**AT ISIOLO**

**ELC CASE NO. 010 OF 2021**

**DIBA HUSSEIN DADO.....PLAINTIFF**

**-VERSUS-**

**MOHAMED NOOR.....DEFENDANT**

**RULING**

1. This application is dated 16<sup>th</sup> August, 2021 and seeks the following orders;

1. **THAT** this application be certified as urgent and service hereof be dispensed with in the first instance.
2. **THAT** pending hearing and determination of this Application inter parties, this Honourable Court be pleased to issue an order of temporary injunction restraining the Defendants/Respondents by themselves, their servants or agents or anyone claiming under them and/or from them, from entering, trespassing, and or interfering with the Plaintiff/applicant's enjoyment, use and possession of the land parcel **ISIOLO TOWNSHIP BLOCK 1/159**.
3. **THAT** pending hearing and determination of this suit, this Honourable Court be pleased to issue an order of temporary injunction restraining the Defendants/Respondents by themselves, their servants or agents or anyone claiming under them or from them, from entering, trespassing, and or interfering with the Plaintiff/Applicant's enjoyment, use and possession of the land and parcel **ISIOLO TOWNSHIP BLOCK 1/159**.
4. **THAT** the OCS Isiolo Police Station to ensure compliance with orders 2 and 3 above.
5. **THAT** the costs of this application be provided for.

2. The application is supported by the affidavit of Diba Hussein Dado, the plaintiff/applicant sworn on 16<sup>th</sup> August, 2021 and has the following grounds:

- a) **THAT** the Plaintiff/Applicant is the legally registered owner of the parcel of land known as **ISIOLO TOWNSHIP BLOCK 1/159** having purchased the same in 2013 from the registered owner Moses Kirimi Mbogori.
- b) **THAT:** the plaintiff/Applicant obtained a Certificate of Lease for the suit property on 24<sup>th</sup> October 2015, and has since then enjoyed peaceful and quite (sic) use and occupation of the suit property.
- c) **THAT** sometimes in 2019 the Defendant/Respondent's, without any color of right, trespassed onto the suit property and begun claiming ownership.
- d) **THAT** the Plaintiff/Applicant lodged a complaint with the CID of Isiolo and the Defendants/Respondents were arrested and charged with the offence of forcible detainer in Isiolo Chief Magistrate Court **Criminal Case No. 385 of 2019**, which is still pending
- e) **THAT** despite being charged in court, the Defendants/Respondents have continued with their acts of trespass and illegal occupation of the Plaintiff/Applicant's land and have even begun to sell portions thereof to third parties
- f) **THAT** the actions of the Defendant/Respondents are in gross violation of the Plaintiff/Applicant's right to ownership of private property recognized and protected under Article 40 of the Constitution of Kenya 2010

g) **THAT** the plaintiff/applicant being the duly registered owner of the suit property has a prima facie case with high chances of success

h) **THAT** if the injunction sought is not granted the Plaintiff/Applicant stands to suffer irreparable harm which cannot be compensated by way of damages

i) **THAT** in the absence of any documents to prove ownership of the suit property by the Defendant/Respondent, the balance of convenience tilts in favor of the plaintiff/respondent

3. In my ruling dated 22<sup>nd</sup> November, 2021, I noted that the defendants were aware of that day's proceedings but did not come to court. I also accept the plaintiff's advocate's statement that they were aware of today's proceedings but they again did not come to court.

4. In the above circumstances, this court deems the application as having been heard and determined and the following orders are issued:

a) Prayers 1 and 2 are spent.

b) Prayers 3 and 4 are granted.

c) The plaintiff is allowed to serve the defendant by way of substituted service.

d) Costs for this application are awarded to the Plaintiff.

e) Directions on 21/2/2022.

f) The plaintiff to serve the orders issued by the court today upon the defendants.

Delivered in Open Court at Isiolo this 7<sup>th</sup> day of February, 2022 in the presences of:

Court Assistant: Denge

Wanjohi for the Plaintiff

**HON. JUSTICE P M NJOROGE**

**JUDGE**