



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 13 OF 2021**

**ISAAC MUNGA MANYARA.....PLAINTIFF**

**VERSUS**

**ANN NJOKI MUNA.....DEFENDANT**

**RULING**

1. The application dated 24/2/2021 and filed in court on the same date, has been bought under **Sections 1A, 1B, 3, 3A & 63(e) and 80** of the **Civil Procedure Act, Order 40 Rule 1(a) and 2(1)** of the **Civil Procedure Rules**. The plaintiff seeks the following orders:-

(1) ...spent

(2) ...spent

(3) **That a temporary injunction of issue restraining the defendant, her servants, agents, or anybody or authority from taking over, evicting the plaintiff from, selling, disposing of or in any other manner interfering with the plaintiff's quiet possession of parcels of land known as WAITALUK/KAPKOI BLOCK 11/GUTONGORIO/52 measuring approximately 2.0223 HA and WAITALUK/KAPKOI BLOCK 11/GUTONGORIO/56 measuring approximately 2.023 HA pending hearing and final determination of this suit or pending further orders of this honourable court.**

(4) **That the costs of this application be provided for.**

2. The application is supported by the affidavit of the applicant sworn on 24/2/2021. The grounds upon which the application is made are that the plaintiff owns the land known as **Waitaluk/Kapkoï Block 11/Gutongorio/52 Measuring Approximately 2.0223 Ha** and **Waitaluk/Kapkoï Block 11/Gutongorio/56** measuring approximately **2.023 Ha**; that he was allocated the suit land as a beneficiary of the deceased **Clement Munga Muna's** estate by way of a settlement agreement in **Succession Cause Number 857 of 1992**; that he has been in possession of the suit land and he has been farming on the same for close to **10** years and that the defendant's act of barring him from the land would occasion the plaintiff irreparable damage and loss unless stopped by way of a court order.

3. The plaintiff has attached a copy of the certificate of official search dated **11/1/2021** and copies of title deeds issued on **5/3/2012** in respect of the suit land showing that the land is registered in his name. Attached to the application is a copy of a settlement agreement apparently entered into between the plaintiff and one **Clement Solomon Munga**. There is a grant of letters of administration intestate to the estate of **Clement Munga Muna (deceased)** issued on **12<sup>th</sup> November 1992** to one **Clement Solomon Munga** and two other persons.

4. In the plaint he states that the defendant is in trespass and that a declaration that he owns the land and an order on injunction against the defendant should issue in the matter.

5. The defendant has not filed any response to the application as per this court directions of **26/2/2021**. An affidavit of service dated **28/2/2021** was filed in the court record on **28/2/2021** stating that the defendant was served with the application at hand.

6. In this court's view the plaintiff has demonstrated that he has a *prima facie* case with probability of success and that he may suffer considerable loss if the orders sought are not issued.

7. Consequently I hereby allow the application dated **24/2/2021** in terms of **Prayer No. (3)** thereof. The costs of the application shall be in the cause.

8. The plaintiff shall ensure that he has complied by filing and service of all documents he relies on by **31/5/2021**. As there appears to be no defence on the record the plaintiff shall make the necessary application for judgment to the Deputy Registrar. This matter shall be listed for the fixing of a hearing date on **8/6/2021**.

**DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 11TH DAY OF MAY, 2021.**

**MWANGI NJORGE**

**JUDGE, ELC, KITALE.**