



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAORK**

**ELC SUIT NO.24 OF 2020**

**SAMUEL KIPKOECH METO.....APPLICANT/PLAINTIFF**

**VERSUS**

**DANIEL OLE SIRMA.....RESPONDENT/DEFENDANT**

**RULING**

The Notice of Motion dated 4/9/2020 before this court is seeking the following Orders: -

1. Spent.
2. That pending the hearing and determination of this Application/Suit the honourable court be pleased to issue an order of injunction restraining the Defendant by himself or his agents from subdividing, transferring, selling and or doing any other act that prejudices the Plaintiff's right to his ownership by purchase, equal use and enjoyment of 7.1 hectares of CIS Mara/Olulunga/5701.
3. That pending the hearing and determination of this Application/Suit the Honourable court be pleased to issue an order restraining the Defendant from harassing, threatening and intimidating the Plaintiff from peaceful, equal use and enjoyment of the 7.1 hectares of portions of CIS Mara/Olulunga/5701.
4. That the Honourable court be pleased on the first instance to order the Defendant to commence and conclude the land transfer process in favour of the Plaintiff of 7.1 hectares of CIS Mara/Olulunga/5701 through the Olulunga Land Control Board and the Land Registrar Office in Narok.
5. That costs of this application be provided for.

The Application is premised on the grounds on the face of the Application and the same is Supported by the Affidavit of the Applicant sworn on even date in which he contends that he purchased the suit land measuring 7.1 hectares from the Respondent vide several Sale Agreements dated 5/3/1997,20/6/1999 and 11/4/2008 respectively. That on several occasions he had requested the Respondent to transfer the property to him to no avail. That on 15/6/2010 the suit land was surveyed and subdivided and a Mutation Certificate Number 288265 registered on 11/7/2012. That the Applicant is likely to suffer loss of investments if the Orders sought are not granted.

The Application was opposed by the Replying Affidavit of Daniel Ole Sirma, the Respondent herein sworn on 2/12/2020 in which he contends that he is the registered owner of the suit land before it was subdivided into ten portions being CIS MARA/OLULUNGA/13816,13817,13818,13819,13820,13821,13822,13823,13824 AND 13825 and that he had submitted his title to a close friend who might have sold it to a different party.

I have analysed the application before me, the Replying Affidavit and the Submissions. The issue for determination now is whether the Applicant is entitled to the Orders of injunction.

**Order 40 rule 1 of the Civil Procedure Rules** provides that Cases in which temporary injunction may be granted under Order 40, rule 1 provides that 'Where in any suit it is proved by affidavit or otherwise— (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders'.

In my view, and in the best interest of justice, both parties need to be accorded time in court to ventilate their issues. I hereby allow application dated 4/9/2020 in terms of prayer number 2 and 3. Costs to be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK ON THIS 10<sup>TH</sup> DAY OF JUNE, 2021**

**MOHAMMED N. KULLOW**

**JUDGE**

**10/6/2021**

In the presence of:

CA:Chuma

Parties and advocates absent

**MOHAMMED N. KULLOW**

**JUDGE**

**10/6/2021**