



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC NO. 5 OF 2020

KIROKET OLE TANIN.....1ST APPLICANT/PLAINTIFF

BENARD SALAU TANIN.....2ND APPLICANT/PLAINTIFF

-VERSUS-

THE LAND REGISTRAR, NAROK COUNTY.....1ST RESPONDENT

THE COUNTY SURVEYOR, NAROK COUNTY.....2ND RESPONDENT

AND

THE NATIONAL LAND COMMISSION.....INTERESTED PARTY

RULING

Before this court is a Notice of Motion dated 31/1/2020 brought under Sections 1A, 1B,3A of the Civil Procedure Act and Order 40 Rule 2, Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders: -

1. Spent

2. Spent

3. Spent

4. That pending the hearing and determination of this application, the honourable court be pleased to issue a temporary injunction restraining the Defendants/Respondents either by themselves, their agents, and or persons under their express authority from issuing title deeds in the property known as the Enoombarbali Adjudication Section, Narok.

5. That pending the hearing and determination of this application, the honourable court be pleased to issue a temporary injunction restraining the Defendants/Respondents either by themselves, their agents, and or persons under their express authority or any person from evicting, harassing, threatening to evict, and in any way interfering with the plaintiffs quiet possession and or continued residency in the property from issuing title in the property known as the Enoombarbali Adjudication Section, Narok.

6. That pending the hearing and determination of the suit filed herein, the honourable court be pleased to issue a temporary injunction restraining the Defendants/Respondents either by themselves, their agents and or persons under their express authority from issuing title deeds in the property known as the Enoombarbali Adjudication Section, Narok.

7. That pending the hearing and determination of the suit filed herein, the honourable court be pleased to issue a temporary injunction restraining the Defendants/Respondents either by themselves, their agents and or person under the express authority or any person from evicting, harassing, threatening to evict, and in any way interfering with the plaintiffs' quiet possession and or continued residency in the property known as Enoombarbali Adjudication section, Narok.

8. 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 a replica of the supporting affidavit of Benard Salau Tanin sworn on 31/1/2020 in which he avers that they have lived on the suit property for more than sixty years and the same has been utilized by several clans for more than 100 years. That sometime in 2013 the suit property was designated as a Land Adjudication Section which was to be sub divided and title deeds to be issued. The applicant herein has gone into details and narrated the displeasure in which the

manner of adjudication section was conducted and more particularly contrary to the procedures as laid down in the Land Adjudication Act Cap 284. He contends that adjudication committee appointed a private surveyor known as Abraham Kuinet to undertake the survey process and demarcation of land contrary to the act. That the private surveyor was also allocated land in the adjudication section contrary to the balloting process and policies. That the applicant protested the entire process with the Principal Land Adjudication and Settlement Officer, Narok which complaint was dismissed on 9/2/2016. That upon dismissal of their complaint, they lodged a complaint with the interested party on 4/10/2019. That they also sought to resolve the dispute in the presence of the local area chief in which the boundaries between the two villages that is the Isinon Lele Tanin and Lengasamu villages was clearly determined and demarcated. It is their contention that their efforts to establish registration of the suit property in accordance with Section 27 and 28 of the Land Adjudication Act have been futile both in Narok and Nairobi. Further, that the required notices and adjudication register was never in writing contrary to section 31 of the Land Adjudication Act. That as a result of the respondents' action, the applicants have suffered injustice and they are apprehensive that they will be vacated and lose their right to property as enshrined in article 40 of the Constitution. The applicants have attached documents in support of their application.

This application was not opposed despite several notices issued and service effected to the respondents and the interested party. I have analyzed the application and the documents relied upon by the applicants herein and their submissions on record. The issue for determination is whether the applicants herein are entitled to grant of prayers 4-8 as sought.

A careful reading of the instant application raises issuing of the adjudication process concerning an area declared to be an adjudication section. Adjudication process is well provided in the Land Adjudication Cap 284. The Act outlines procedure to be followed up until issuing of title deeds. In the event that a person is aggrieved by the decision or is challenging the process thereof, he or she may file an objection with the adjudication officer in writing as is provided under section 26 of the Land Adjudication Act.

Based on the foregoing and however merited the grievances of the applicants are as raised in the application, in my view the applicants have not fully exhausted the avenues for remedy as contemplated under Section 30 of the Land Adjudication Act.

Based on the foregoing, I do find that the application herein is premature and the same is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KILORIS ON THIS 27TH DAY OF JULY, 2021

MOHAMED N. KULLOW

JUDGE

27/7/2021

In the presence of:

CA:Chuma

N/A for the advocates and parties