



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 40 OF 2019

AGRICULTURAL DEVELOPMENT CORPORATION.....1ST PLAINTIFF

LANDS LIMITED.....2ND PLAINTIFF

VERSUS

MICHAEL WANGILA MAKWA & 159 OTHERS.....DEFENDANTS

RULING

1. This is a ruling on two applications, one filed by the plaintiff on **14/5/2019** and of even date and another one dated **15/3/2021** and filed by the defendants on **19/3/2021**.

2. The application dated **14/5/2019** seeks the following orders:

(1) ...spent

(2) ...spent

(3) ...spent

(4) ... spent

(5) ...spent

(6) That upon *inter partes* hearing, the injunction order be confirmed to such time when the pending suit would be heard and finally determined.

(7) That the OCS Endeless Police Station be directed to ensure the compliance of the injunction order.

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

3. The application is supported sworn affidavit **Dr. Maurice Cherogony**, the Regional Manager of the application corporation sworn on **14/5/2019**. The **10th, 16th, 23rd, 29th, 32nd, 34th, 35th, 53rd, 79th, 85th, 14th, 148th, 152nd and 154th** defendants filed joint replying affidavit dated **19/9/2019**. Another replying affidavit sworn by **Justus Simiyu Makokha** on his own behalf and on behalf of his co-defendants on **13/11/2019** was filed.

4. The grounds on which the application is based are that the applicant is the owner of the land comprised in **LR Nos 4140/3, 6106/4, 7136/5, 7155, 7156, 7156/7, 7156/9-11, 7156/14-16, 9437 and 9439**. These parcels combined form **Japata Farm** whose acreage is said to be **6302 acres**. The applicant avers that the defendants have trespassed on the suit land yet they have no proprietary interest whatsoever in the same. The suit land is used for food crops, seed maize and seed grass, and livestock production. It is stated that the occupation of the land under staff housing was restructured and more land was put under agricultural production. However the respondents, feeling affected by the 1st plaintiff's move, petitioned the court alleging that their constitutional rights were being violated and subsequently withdrew the petition before hearing. The respondents are said to have subsequently interfered with the agricultural operations of the respondent on the suit land and have even uprooted the applicants' germinated maize plants on the farm. The plaintiffs have exhibited their titles to the suit land.

5. The application dated **14/5/2019** is was partially granted on **14/5/2019** in terms of the orders of substituted service sought. An interim order of injunction was also issued pending the hearing and determination of the application *inter partes*. Hearing *inter partes* of the main prayer of injunction pending the hearing of the suit was scheduled for hearing at Eldoret on **11/6/2019**. The ELC court at Eldoret extended

the orders to 26/6/2019. This court sat on 1/7/2019 and reinstated the interim orders till 11/7/2019 on which date the application was set down for hearing on 23/7/2019. On the latter date the application was set down for hearing on 19/9/2019 on which date the application was set down for a mention on 17/10/2019. On 17/10 /2019 the application was set down for mention on 7/11/2019; on the latter date parties were ordered to file submissions; on 16/6/2021 the application dated 14/5/2019 and the one dated 15/3/2021 were consolidated.

6. In the application dated 15/3/2021 the defendants seek the following orders:

(a) That this honourable court direct the County Surveyor Trans Nzoia to visit the site, survey and ascertain and set the actual boundaries of the plaintiff's land and prepare a comprehensive report for adoption by this court.

(b) That this honourable court be pleased to issue a temporary injunction restraining the plaintiff by themselves, their agents, servants, assignees or any other persons acting on their behalf from entering into, trespassing onto, cultivating, erecting any structures, evicting and/or interfering with the occupation of the Japata Farm comprising land parcels LR. Nos. 6106/4 and 9439 by the defendants pending the hearing and determination of this application *inter partes* and thereafter pending the hearing and determination of the main suit.

(c) That the *status quo* be maintained pending the hearing and determination of this application *inter partes*.

(d) That both parties bear the costs of the surveyors equally.

(e) That costs of this application be borne by the plaintiff.

7. The application is supported by the affidavit sworn on 15/3/2021 by Justus Simiyu Makokha who has been authorized by his co-defendants to swear on their behalf.

8. The application dated 15/3/2021 is premised on the grounds that the applicants have been in occupation of Japata Farm since 1969; that they have used the land exclusively for cultivation; that the respondent is a trespasser on the land; that the respondent has issued them with threats of eviction without any legal basis and that they have a *prima facie* case with chances of success. The defendants aver that Japata Farm is comprised of two parcels that is LR No 6106/4 and 9439. These parcels are included by the plaintiff amongst others in their claim for an injunction in the earlier application dated 14/5/2019. It is noteworthy that the defendants have not exhibited any titles in their names in respect of the two parcels. However they claim that the said land is not utilized by the plaintiffs, and that there is a clear demarcation between it and the land the plaintiffs use. It is clear that their claim is primarily premised on lengthy occupation and utilization only and not on any legal title.

9. The plaintiffs filed a replying affidavit sworn on 16/6/2021 by Edward Ojode, Acting Regional Manager of the 1st plaintiff. In that affidavit the deponent states that the defendants have failed to demonstrate ownership of the suit land hence the injunction they seek can not be granted; that in their amended defence they have claimed LR No 6106/4, 7155, 9437 and 9439 thereby acknowledging that the land belongs to the plaintiffs; that the employees of the 1st plaintiff are housed within the farm and that the defendants are not its employees; that the defendants are claiming ownership of Japata Farm by adverse possession in another different suit that is **Kitale ELC Land Case No 47 Of 2020 (OS)** in which they aver that they stay in the six camps that accommodate the 1st plaintiff's employees and thus they are abusing the process of the court and that the two suits should be consolidated and heard on priority basis.

Submissions

10. The plaintiffs and the defendants all filed their written submissions in respect of the application dated 14/5/2019 and the one dated 15/3/2021.

Analysis Determination

11. I have considered the two applications, the responses and the filed submissions. I find that the defendants have no title to the suit land and a claim over land based on long occupation and utilization is doubtful when title to such land is owned by the plaintiffs. This court can not agree with the defendants at this juncture that the plaintiffs are trespassers on the land whose title they hold. The defendants have therefore not demonstrated that they have a *prima facie* case against the plaintiffs.

12. On the other hand the plaintiffs have demonstrated that they have legal title to the suit land and that the activities of the defendants are likely to jeopardize their operations which are apparently for the public good in contrast to the activities of the defendants which I consider to be purely for their private gain. The plaintiffs have demonstrated a *prima facie* case against the defendants.

13. Consequently I dismiss the application dated 15/3/2021 and I grant the application dated 14/5/2019 in terms of **Prayers Nos 6 and 7**.

14. The costs of both applications shall be borne by the defendants.

15. As there is another suit that is, **Kitale ELC Land Case No 47 of 2020 (OS)** further orders must be made herein. The suits concern a great number of defendants and it is vital that they be heard expeditiously and at the earliest so that the rights of all the parties are substantively determined. Consequently, I order that both suits be and are hereby consolidated. The two suits shall be mentioned on 30/9/2021 for issuance of a hearing date.

It is so ordered.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 9TH DAY OF AUGUST, 2021

MWANGI NJORGE

JUDGE, ELC, KITALE.