



**REPUBLIC OF KENYA**

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

**ELC NO. 71 OF 2020 (O S)**

**JOHN MUIYURO KAMAU.....PLAINTIFF**

**(FOR AND ON BEHALF OF THE**

**Catholic Diocese of Kitale)**

**VERSUS**

**SOLMAT ENTERPRISES OF KITALE.....1<sup>ST</sup> DEFENDANT**

**ISAAC MACHARIA.....2<sup>ND</sup> DEFENDANT**

**RULING**

**The Application**

1. The 2<sup>nd</sup> defendant herein filed a Notice of Motion dated 16/4/2021 which he later amended on 23/4/2021. The application is brought under Section 1A, 3A and 63(e) and 80 of the Civil Procedure Act, Order 8 Rule 3, Order 1 Rule 10(2), 4 and 25, Order 40 Rule 1, 2 and 3, Order 45 Rule 1 and Order 51 of the Civil Procedure Rules. In that amended application the 2<sup>nd</sup> defendant seeks the following orders:-

(1) ...spent

(2) ...spent

(3) That the plaintiff/respondent or his servant(s) and or worker(s) and/or assignee(s) and/or any other person(s) in their association and/or acting under their instructions be and are hereby restrained by way of temporary injunction from entering into land parcel No. KITALE MUNICIPALITY BLOCK 3/333 measuring 0.046 Ha or thereabout and staying, residing, destroying property therein and/or conducting functions and/or ceremony in the suit land pending hearing and final determination of the main suit.

(3A) That the orders given by this honourable court on 26/1/2021 be reviewed, varied and/or set aside.

(4) Any such orders as this honourable court may deem to issue.

(5) The costs of this application be provided for.

2. The application is supported by 2 affidavits sworn by the 2<sup>nd</sup> defendant. The grounds on the face of the application are that the applicant is in possession of the suit property; that there is discovery of new and important issues that were not within the knowledge of the court at the time of the delivery of the ruling sought to be reviewed.

**The Response**

3. The plaintiff filed a replying affidavit sworn on 30/4/2021. His response is that the applicant has failed to disclose material facts namely that he is a director of the 1<sup>st</sup> defendant; that he is bound by the orders given against the 1<sup>st</sup> defendant; that he was aware of the sale of the suit land to the Catholic Diocese Of Kitale; that with ill motive fraudulently and illegally, he caused himself to be registered as proprietor of the suit land.

**Reply to Replying Affidavit**

4. The 2<sup>nd</sup> defendant filed supplementary affidavit sworn on 10/5/2021. His response is that there is no material non-disclosure on his part; that he was not involved in the alleged sale of the land to the Catholic Diocese of Kitale; that he is not a director of Solmat enterprises of Kitale as alleged; that he holds a genuine title deed over the suit land and that the plaintiff has attempted to forge documents so that they may tally with his claims that some people had attempted to defraud them while disguising themselves as the owners of the suit land.

#### **Submissions**

5. On 14/7/2021 the court directed the application be disposed of by way of written submissions. The 2<sup>nd</sup> defendant filed his written submissions on 12/8/2021. I have perused the file record and find no submissions filed on behalf of the plaintiff and the 1<sup>st</sup> defendant.

#### **Analysis and Determination**

6. I have considered the application together with supporting affidavits, the response and the submissions filed. This is a complex matter involving claims of fraud and which requires a substantive hearing of the main suit to determine the veracity of the claims of each party. I have however considered that the claim of the plaintiff is in adverse possession and that makes the court sensitive about the grant of any orders that may interfere with the situation on the ground which none of the parties has conclusively established as at date.

7. Following the claims and counterclaims of occupation by the parties at this stage, and bearing in mind that only the plaintiff had initially indicated to having purchased the land and to having failed to trace the directors of the seller to effect transfer, I find that the most appropriate order to issue would be an order preserving the status quo of the land as at the time the application dated 26/11/2020 was filed by the plaintiff.

8. Consequently I order as follows:

**a. The amended application dated 23/4/2021 is hereby granted but only to the extent that the orders of this court issued on 26/1/2021 are reviewed and so only to the extent that none of the parties shall interfere with the suit land in any manner whatsoever pending the hearing and determination of this suit, and, in that regard the status of the suit land as at 30/11/2020 shall be strictly observed by all parties.**

**b. The costs of the application shall be in the cause.**

**DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2021**

**MWANGI NJOROGI**

**JUDGE, ELC, KITALE.**