



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ISIOLO

E.L.C. NO. 010 OF 2021

DIBA HUSSEIN DADO.....PLAINTIFF

VERSUS

MOHAMED NOOR.....DEFENDANT

RULING

1. This application is dated 16th August, 2021 and seeks the following orders;

1. **THAT:** this application be certified as urgent and service hereof be dispensed with in the first instance.
2. **THAT:** pending hearing and determination of this Application inter parties, this Honourable Court be pleased to issue an order of temporary injunction restraining the Defendants/Respondents by themselves, their servants or agents or anyone claiming under them and/or from them, from entering, trespassing, and or interfering with the Plaintiff/applicant's enjoyment, use and possession of the land parcel **ISIOLO TOWNSHIP BLOCK 1/159**.
3. **THAT:** pending hearing and determination of this suit, this Honourable Court be pleased to issue an order of temporary injunction restraining the Defendants/Respondents by themselves, their servants or agents or anyone claiming under them or from them, from entering, trespassing, and or interfering with the Plaintiff/Applicant's enjoyment, use and possession of the land and parcel **ISIOLO TOWNSHIP BLOCK 1/159**.
4. **THAT:** the OCS Isiolo Police Station to ensure compliance with orders 2 and 3 above.
5. **THAT** the costs of this application be provided for.

2. The application has the following grounds;

- a) **THAT:** the Plaintiff/Applicant is the legally registered owner of the parcel of land known as **ISIOLO TOWNSHIP BLOCK 1/159** having purchased the same in 2013 from the registered owner Moses Kirimi Mbogori.
- b) **THAT:** the plaintiff/Applicant obtained a Certificate of Lease for the suit property on 24th October 2015, and has since then enjoyed peaceful and quite (sic) use and occupation of the suit property.
- c) **THAT:** sometimes in 2019 the Defendant/Respondent's, without any color of right, trespassed onto the suit property and begun claiming ownership.
- d) **THAT:** the Plaintiff/Applicant lodged a complaint with the CID of Isiolo and the Defendants/Respondents were arrested and charged with the offence of forcible detainer in Isiolo Chief Magistrate Court **Criminal Case No. 385 of 2019**, which is still pending
- e) **THAT:** despite being charged in court, the Defendants/Respondents have continued with their acts of trespass and illegal occupation of the Plaintiff/Applicant's land and have even begun to sell portions thereof to third parties
- f) **THAT:** the actions of the Defendant/Respondents are in gross violation of the Plaintiff/Applicant's right to ownership of private property recognized and protected under Article 40 of the Constitution of Kenya 2010
- g) **THAT:** the plaintiff/applicant being the duly owner of the suit property has a prima facie case with high chances of success
- h) **THAT:** if the injunction sought in not granted the Plaintiff/Applicant stands to suffer irreparable harm which cannot be

compensated by way of damages

i) **THAT:** *in the absence of any documents to prove ownership of the suit property by the Defendant/Respondent, the balance of convenience tilts in favor of the plaintiff/respondent*

j) **THAT:** *unless restrained by this Honourable Court, the Defendants/Respondents intend to continue with their illegal acts of trespass and may even dispose of the suit property to third parties*

k) **THAT:** *it is in the interest of justice that the orders sought are granted*

l) **THAT:** *the honourable Court has the jurisdiction to grant the orders sought.*

3. On 25/10/2021, I ordered that Notices be issued to the parties to come to court for directions on 16/11/2021. The court notes that notices were properly issued upon the parties.

4. On 16/11/2021 only Mr. Wanjohi, the plaintiff's advocate was in court. He asked the court to grant prayers 2 and 4 pending the hearing of the application inter parties. I declined to grant the orders and directed the advocate to properly serve the suit papers upon the defendants within 7 days including the order that the parties would come to court for directions on 22/11/2021

5. I am satisfied that the defendants were properly served with today's mention date, but they did not come to court.

6. In the circumstances, prayers 2 and 4 on the application dated 16th August, 2021 are hereby granted.

7. Costs shall be in the cause

DELIVERED IN OPEN COURT AT ISIOLO THIS 22ND DAY OF NOVEMBER, 2021 IN THE PRESENCES OF:

COURT ASSISTANT – BALOZI

WANJOHI FOR THE PLAINTIFF/APPLICANT

HON. JUSTICE P M NJOROGI

E LC JUDGE