



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT

AT KITALE

ELC PETITION NO. 3 OF 2018

JOHN MASINDE KANCHENJA.....PETITIONER

VERSUS

TRANS-NZOIA LAND ADJUDICATION & SETTLEMENT OFFICER.....1ST RESPONDENT

THE DIRECTOR OF LAND ADJUDICATION OFFICER.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

JEREMIAH MARABU MIYORO.....INTERESTED PARTY

RULING

1. This ruling is in respect of an application brought by way of Notice of Motion dated 7/8/2019 under Order 40 Rules 1, 2 &4, Article 23, 50 (1) of the Constitution of Kenya. The petitioner seeks the following orders:-

(a) ...spent

(b) ...spent

(c) That conservatory orders be issued restraining the interested party, whether by himself, his servants, agents and/or employees or any person acting on behalf of or on the instructions of the interested party from evicting the petitioner/applicant or otherwise interfering with *status quo* with regards to the suit land until the hearing and determination of the substantive petition thereof.

(d) That costs be in the cause.

2. The grounds relied on are that the interested party has on several occasions threatened to evict the petitioner from the suit land and on 6/8/2019 the interested party uprooted the main door to one of the applicant's structures standing on the land in dispute; that the interested party has on several occasions interfered with the suit land by destroying the plants that had already been planted by the petitioner and threatened the family of the petitioner with bodily harm; that the petitioner has been in occupation of the suit land since 1985 and has made considerable investments on the land; that the petition raises fundamental questions constitutional questions which shall be rendered nugatory should the court not intervene at this stage; that the petitioner shall suffer irreparable and substantial loss should the court

decline to issue the orders sought and that the petitioner has a *prima facie* case with high probability of success.

3. The application is supported by a sworn affidavit of the petitioner on sworn on **7/8/2019** which reiterates the same matters as set out on the face of the application.

4. The interested party filed replying affidavit on **16/9/2019** and his response is that he is the registered proprietor of the suit land having taken possession in the year **2015**; that the petitioner has never resided on the suit land; that the application is without merit and is an abuse of the court process; that the interested party has fenced off the land with posts and barbed wire and fully utilizes the land; that the petitioner had filed a similar suit which was withdrawn when his application for temporary injunction was dismissed and that the conservatory orders being sought are therefore in vain.

5. The petitioner filed his submissions on **24/10/2019**. The interested party filed his written submissions on **22/11/2019**. I have considered the instant application, the response and the filed submissions.

Determination

6. The main issue for determination in the instant application is whether conservatory orders should issue restraining the interested party from evicting the petitioner/applicant or otherwise interfering with the *status quo* regarding the suit land.

7. An examination of the contents of the petition is necessary. In the petition the petitioner's case is that he took possession of Plot **No. 182 Kanyarkwat Scheme** in **1985** after being "temporarily" shown the same by the District Settlement Officer Trans Nzoia awaiting full settlement and he has been in uninterrupted occupation to date. He further avers that the suit land was repossessed from the initial allottee for failure to meet the settlement conditions and allocated to one **Hannah Kirui**; that the said Hannah Kirui also failed to meet the conditions for allocation; that on **20/8/2012** the petitioner made an application to be allocated the suit land officially whereupon Hannah Kirui was issued with a notice to remedy the breach of conditions for allocation within 60 days which she failed to do. The petitioner implies that subsequent to that default Hannah Kirui's allocation was cancelled. A ground report was then prepared confirming the petitioner's occupation of the suit land. However before an allocation letter could be issued to the petitioner the interested party claimed the suit land, stating that he had bought it from Hannah Kirui on **13/3/2015**. The petitioner alleges that he has learnt the interested party is in the process of obtaining title deed in respect of the suit land. He sets out the particulars of fraud in his petition. His claim is for a declaration that the 2nd and 3rd respondents should have given him priority by virtue of his long possession and that the allocation should have been open public and transparent.

8. It would appear that at the moment and for the purposes of their application the main bone of contention between the petitioner and the interested party centres around who is in occupation of the suit land with each of the two parties claiming possession.

9. The 1st, 2nd and 3rd respondents in their replying affidavit sworn by the County Land Adjudication and Settlement Officer on **6/5/2019** state that all the actions taken were in compliance with the law. However they do confirm that the plot formerly was allocated to Hannah Kirui and that her allocation was subsequently cancelled; that however the said Hannah Kirui paid **Kshs.50,000/=** *after* the notice to remedy the breach; that the petitioner has never applied for neither been allocated the said parcel and has not furnished evidence of such application; that there has been protracted dispute between the petitioner and the interested party; that the 1st - 3rd respondents have confirmed that the petitioner has constructed a semi-permanent house on the suit land but the interested party had planted maize after the petitioner ploughed the land; that upon perusing the report the Director of Land Adjudication and Settlement Officer elected to allocate the suit land to the interested party and issued him with a letter of offer while the petitioner was allocated another plot within the same scheme; that the suit land has been discharged and title has been issued to the interested party and therefore the orders sought have been overtaken by event.

10. I have considered that the 1st - 3rd respondents being the administrators of the land which includes the

suit land have conceded that the petitioner had developed the land before the interested party came along and planted crops on the land.

11. A perusal of exhibit “JMK6” in the petition creates the impression of land which had already been settled upon and utilized by the petitioner. It appears that the interested party does not have any structure on the land. In my view it is appropriate to preserve the subject matter of the suit land from the actions of the interested party pending the hearing and determination of this petition.

12. This court finds that the application dated 7/8/2019 is merited. I therefore grant the same and issue the following orders:

(a) A conservatory order restraining the interested party, whether by himself, his servants, agents and/or employees or any person acting on behalf of or on the instructions of the interested party from evicting the petitioner/applicant or otherwise interfering with *status quo* with regards to the suit land until the hearing and determination of the substantive petition thereof.

(b) That the costs of the application shall be in the cause.

Dated, signed and delivered at Kitale on this 28th day of January, 2020.

MWANGI NJOROGE

JUDGE

28/1/2020

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Ngeywa for petitioner

N/A for the respondents

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

28/1/2020