



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC SUIT NO. 12 OF 2019

ANGATA BARGOI FARMERS

CO-OPERATIVE SOCIETY LTD.....PLAINTIFF/APPLICANT

-VERSUS-

SINOHYDRO CORPORATION LTD.....DEFENDANT/RESPONDENT

RULING

By a Notice of Motion dated 18th February, 2019 the Applicants sought the following orders: -

1. Spent

2. Spent

3. Spent

4. The court be pleased to grant an order of temporary injunction restraining the Defendant/Respondent either by herself, agents, servants, and/or anyone claiming under the said Defendant/Respondent, from entering upon, re-entering, trespassing onto, taking possession of, excavating murrum, fencing, building/erecting structures and/or interfering with the rights and/or interests of the plaintiff/applicant and/or in any other manner, whatsoever, dealing with the suit property, that is LR. NO. TRANS MARA/MOYOI/2 and/or any portions thereof, pending the hearing and determination of this suit.

5. The court be pleased to grant an order of mandatory injunction directed against the defendant/respondent herein, to be evicted from, to move out, vacate and/or grant vacant possession of LR. NO. TRANS –MARA/MOYOI/2 and/or any portions thereof, including removal of the structures erected on the suit property, albeit without the authority and/or consent of the plaintiff/applicant, pending the hearing and determination of this suit.

6. The court be pleased to grant such further and/or other orders, that may preserve and/or protect the rights and/or interests of the plaintiff/applicant over and in respect of LR. NO. TRANS-MARA/MOYOI/2.

7. The O.C.P.D. Trans-Mara West Police Division and the O.C.S. Lolgorian Police Station, be ordered and/or directed to enforce and/or implement the court orders herein and/or ensure compliance therewith.

8. Costs of this application be borne by the defendant/respondent

9. Such further and/or other orders be made as the court may deem fit and expedient.

The Application was based on the grounds that the plaintiff/applicant is the lawful registered owner of Land Parcel Trans Mara/Moyoi/2 in which they are entitled to exclusive use of the same.

It is the applicant's contention that the respondents have vicariously interfered with the applicant's possession and occupation of the land which amounted to forceful entry and detainer.

The Applicant avers that the respondent had on the 11th February, 2019 entered into the suit property without any authority and commenced occupation possession and construction of structures and the excavation of murrum from the said land and thus interfered with the applicant's legitimate rights over the property.

The Applicant further argued that the activities of the respondent on the land will interfere and completely change and alter the texture of soil and thus cause irreparable loss and damage.

The application was opposed by the respondent who denied that they trespassed on the applicant's land. It is the respondent's contention that the suit land does not belong to the applicant and moreover the land they have leased is land parcel Trans-Mara/Angata Baragoi/588 and not Trans Mara/Moyoi/2.

I have considered the Application before me and the submissions made by the parties. This is an application in which the applicant is seeking an order of injunction and the grounds upon which the same can be granted is well settled and whether the applicants have made a prima facie case with probability of success and if damages will not be adequate compensation and on whose side does the balance of convenience tilt.

From the pleadings filed the applicants contend that they are the owner of land parcel Trans Mara/Moyoi/2 in which the respondents have trespassed into, possessed and occupied and started the appropriation and excavation of murrum. The Respondent on its part deny trespassing on the applicant's land and insists that it occupies land parcel Tans Mara/Angata Baragoi/588 which is different from the land the applicant alleges to own. From these it seems that the respondents allege that it is not the applicants land and therefore the applicants doesn't deserve the orders sought.

Having looked at the pleadings I don't see why the applicants will attempt to stop the respondents from excavating murrum from land that does not belong to it. The Respondent except from saying that they occupy a land they leased have not filed any affidavit or report to show that LR Trans Mara/Angata Baragoi/588 is different from Trans Mara/Moyoi 2. The applicants have shown that indeed it is on their land that the respondent has been occupying and excavating murrum from. They have attached evidence to show that indeed the respondent has equipment on the land.

From the above, I find that the applicant has established a prima facie case with probability of success and since the act complained of will likely lead to the change of soil texture and composition and the suit land is mainly agricultural, I find that damages may not be adequate compensation and hence the balance of convenience tilts in their favour.

In view of the above I find that the notice of motion dated 18th February, 2019 is merited and I will allow the same with costs.

DATED, SIGNED and DELIVERED in open court at NAROK on this 25th day of February, 2020.

Mohammed Kullow

Judge

25/2/2020

In the presence of: -

CA:Chuma/Kimiriny

Ms Adala holding brief for Ogutu Mboya for the Plaintiff/applicant

Mohammed Kullow

Judge

25/2/2020