



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC NO. 47 OF 2019

MOSOITO OLE KOILEL & 47 OTHERS.....PLAINTIFFS/APPLICANTS

VERSUS

SIPOI PARTEI NTIYIA & 2 OTHERS.....DEFENDANTS/RESPONDENTS

RULING

The Applicants had by a Notice of Motion dated 18th September, 2019 sought for the following orders: -

1. Spent
2. Spent
3. That a temporary injunction do issue, restraining the defendants herein by herself, her servants, agents or anyone acting under her or under her authority, or otherwise whosoever from dealing with CIS-MARA/NAILOKLOK/131 pending the hearing and determination of this application interparties.
4. That the costs of this application be borne by the defendant/respondent.

The Application was based on the grounds that the Applicant is the owner of land parcel CIS MARA/NAILOKLOK/131 in which the 1st and 2nd Respondents had fraudulently transferred to themselves which prior to the application was disputed between the parties. It is contended by the Applicants that by a letter dated 8th October, 2008 which was purported that committee members of Ndero Group Ranch issued to authorities the said transfer was a forgery contrary to the decision of the District Land Adjudication Officer.

The Application was opposed by the 1st and 2nd Respondents by way of a replying affidavit that was filed by the 2nd Respondent. The Respondent contend that the transfer of the said land was done with the consent of the group members and that there was no fraud involved in the matter.

I have considered the application before me and the submissions filed by the parties. This being an interlocutory application seeking orders of injunction the grounds upon which such orders are granted is now well settled. As to whether the applicants have established a prima facie case, whether damages are adequate compensation and in whose favour does the balance of convenience tilts.

The applicants alleged that the suit land was transferred to the 1st and 2nd respondent via a fraudulent letter dated 8th October, 2008. From the pleadings the applicants have not even attached a copy of the said letter or how the alleged fraud resulting in the alleged transfer was done. For a party to allege that there was fraud he must be able to discharge the burden in proving that the same took place in the first instant and in the absence of the above I find that the applicants have not satisfied the first ground to warrant the grant of orders of injunction which is to establish a prima facie case with a probability of success.

Having stated that the applicants have failed to establish a prima facie case I find that the application lacks merit and I thus dismiss 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

Mr Kiruti holding brief for Onduso for the Plaintiff/Applicant

Ms Karia holding brief for Maritim for 1st and 2nd defendants