



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

JUDICIAL REVIEW NO. 1 OF 2018

IN THE MATTER OF AN APPLICATION BY:

SOITARA SAOLI.....SUBJECT

FOR JUDICIAL REVIEW PROCEEDINGS IN THE NATURE OF CERTIORARI

AND PROHIBITION AND IN THE MATTER OF PROCEEDINGS AND RULING IN THE NAROK

ADJUDICATION OFFICE, UNDER LAND ADJUDICATION ACT, CAP 284 OF THE LAWS OF KENYA

AND

IN THE MATTER OF APPEAL TO THE MINISTER IN CASE NO. 114 OF 2005

AND

IN THE MATTER OF THE PROCEEDINGS AND A COURT RULING MADE ON 9TH MARCH, 2018

BY THE DEPUTY COUNTY COMMISSIONER, NAROK NORTH SUB COUNTY

AND

IN THE MATTER OF AN APPLICATION BY:

REPUBLIC.....APPLICANT

VERSUS

CABINET SECRETARY FOR LANDS.....1ST RESPONDENT

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

DEPUTY COUNTY COMMISSIONER, NAROK NORTH SUB COUNTY.....3RD RESPONDENT

AND

PAUL MOROMBI SAOLI (REPRESENTING

LEPOSO OLE SAOLI, NOW DECEASED).....INTERESTED PARTY

EX PARTE

SOITARA OLE SAOLI.....SUBJECT

RULING

(Application dated 26th March, 2019)

By a Notice of Motion dated 26th March, 2019, the Applicant Paul Morombi Saoli seeks orders of injunction restraining all parties to the suit from cultivating, planting, sowing, suing for any economic gain or adversely dealing with the property LR NO. CIS MARA/OLOKURTO/60 pending the hearing and determination of the application. The Applicant also requested that if the said orders are granted the Narok North Sub County Police Commander be sent to visit the site of suit property to confirm adherence of court orders issued.

From the grounds set out on the application, and the applicants affidavit sworn on 1st April, 2019 in support of the application the applicant's case is that while the contempt of court application by the respondent dated 7th December, 2018 was still in cause, the respondent himself moved into the suit property and started cultivating the said land to the extent of trespassing into the section of the land that was originally a preserve of the interested party/applicant in total regard of the order he (the respondent)relied on his contempt of court application. The Applicant further alleged that he is likely to suffer immeasurable loss which cannot be quantified in monetary terms if the respondent/subject is allowed to continue his blatant disregard to existent court orders.

The Applicant in support of his application avers that in addition to defying the orders granted by court as to maintenance of the status quo, the respondent further trespassed into and cultivated his part of the suit property which is not contested and such actions can best be dismissed as intended acts of provocation. The applicant attached a copy of photos of the cultivated land marked P.M. 2.

In response to the application, the respondent Soitara Ole Saoli through his replying affidavit dated 17th April, 2019 dismissed the application as being frivolous and a blatant abuse of court process. He avers that this application has been brought maliciously and intentionally to confuse the process of the court by seeking ways of watering down orders previously sought and issued by court.

The respondent states that the allegations by the applicant that he and his family trespassed and cultivated the disputed parcel of land beyond the temporary boundaries erected is false and pleads with court to appoint an independent officer to visit the land and do a joint report on the same.

The respondent maintains that the photos annexed to the application by the applicant are false and seek to mislead the court. He annexed his own photo of the suit land which indicates that the same is not cultivated land.

I have read and considered the application and the averments in both the supporting and replying affidavit together with the submissions and state that the application has not satisfied the ingredients for orders of injunction and I consequently dismiss the same with no orders as to 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

Dr Nyakaga for the exparte applicant

Mr Kilele holding brief for Mukira for the interested party

Mohammed Kullow

Judge

25/2/2020