



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC NO. 56 OF 2019

IGNATIUS CHEGE MWANGI.....PLAINTIFF

-VERSUS-

ADASON OLE MINIS.....1ST DEFENDANT

OLE NANYOKIE LEMAIYAN ONYOKIE.....2ND DEFENDANT

SHIROI KIMOKOTHO OLE NASHA.....3RD DEFENDANT

MPOKE MATASI.....4TH DEFENDANT

SAMSON MPATIAN RINKA.....5TH DEFENDANT

AHAMAD SALIM.....6TH DEFENDANT

COUNTY GOVERNMENT OF NAROK.....7TH DEFENDANT

RULING

The applicants had by a Notice of Motion dated 4th December, 2019 and brought under order 40 Rules 1,2,3 and 4 of the Civil Procedure Rules and order 50 of the Civil Procedure Rules and under Article 40 and 159 2(d) (3) of the Constitution of Kenya 2010 sought for orders: -

- (i) That this application be certified urgent and be heard ex parte in the first instance for purposes of prayer 2 only
- (ii) That an interim order of injunction do issue restraining the defendnts/respondents by themselves, ther agents, servants or employees from trespassing, interfering, damaging, wasting, fencing, and/or doing any activity on the suit land parcel NO. TRANS-MARA/OLOLCHANI/237 pending the hearing and determination of this application interparties.
- (iii) That an interim order of injunction do issue restraining the defendants/respondents by themselves, their agents, servants or employees form trespassing, interfering, damaging, wasting, fencing, and/or doing any activity on the suit land parcel NO. TRANS-MARA/OLOLCHANI/237 pending the hearing and determination of this suit.
- (iv) Costs of this application be borne by the defendants/respondents
- (v) Such orders and/or directions as deemed just and expedient by the court be made.

The application was based on the grounds that the applicant is the registered owner of the suit land and the respondents are in the process of fencing off the said parcel land without his consent and in the event that the said actions are not stopped he will suffer loss and damage.

The application was further supported by the affidavit of the applicant in which he deponed that he is the absolute owner of land parcel Trans Mara/Ololchani/237 measuring approximately 2.0 Ha. He further stated that he was instructed by the Directorate of Criminal Investigations to handover his title for investigations and that on the 14th November, 2019 and 15th November, 2019 and 15th November, 2019 the Sub-County Administrator Kilgoris had gone to demolish structures on the land comprising of Kiosks and Mabati rooms consequences of which he suffered loss and damages.

The application was opposed by the respondent by way of a replying affidavit that was sworn by the 3rd respondent on her own behalf and on behalf of the 1st, 2nd, 4th, 5th and 6th respondents.

The respondents contends that the applicant is not the absolute owner of the suit land and that is the reason why the Directorate Criminal Investigations had requested him to hand over his title for investigations and that land parcel No. Trans Mara/Ololchani/237 is registered in the name of 5th respondent. they further contend that the applicant's title was purported to have been issued in 1973 when he could not be of age as he was a child and that the same was fraudulently obtained leading to the confiscation by the DCI Kilgoris and the Trans Mara West Deputy County Commissioner for investigations.

I have considered the application before me and the submissions made by counsel. This is an application in which the applicant seeks the equitable remedy of injunction. The grounds upon which injunctions are granted is now settled as held in case of Geilla -versus Cassman Brown. A party seeking the same must establish that he has prima facie case with probability of success, that damages may not be adequate compensation and the balance of convenience tilts in his favour.

In the instant application the applicant contends that he is the absolute and registered owner of the suit land and the respondents contend that they are the registered owner of the land and that the applicants title was fraudulently obtained and currently the subject of an investigation by the Directorate of Criminal Investigations a fact which the applicant has acknowledged.

From the application the respondents have alleged fraud that was perpetuated by the applicant which led to his acquiring title to the land and this in my mind is a matter that can only be determined at a full hearing when the evidence of the parties is taken. However, with the allegations of fraud the fact that both parties have title to the land, I find that the applicant has not satisfied the first requirement for the grant of orders of injunction and further that damages will be adequate compensation in the event that he succeeds in the substantive suit.

Having stated the above, I find the application dated 4/12/19 lacks merit and I thus dismiss the same with costs.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **21st day of July, 2020**

Mohammed N. Kullow

Judge

21/7/2020

in the presence of:-

CA:Chuma

Mr Mugomya for the 1st to 6th defendants

Plaintiff present in person

N/A for the 2nd defendant

Mohammed N. Kullow

Judge

21/7/2020