



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CIVIL SUIT NO. 76 OF 2013**

**JACKSON RUIRU:.....PLAINTIFF**

**VERSUS**

**EDWIN CHEGE MBURU:.....1ST DEFENDANT**

**MARY WAMBOI KINYANJUI:.....2ND DEFENDANT**

**R U L I N G**

By Notice of motion dated 3rd October,2013, the applicant sought an order for a permanent injunction restraining the respondent by himself, his Aor hampering and/or encroaching on any or all that parcel of land known as North Mt. Elgon LR. 5564/4 Kitale Township in Trans-Nzoia county pending the hearing of this suit.

The applicant together with his mother had been sued by the respondent who sought to enforce compliance of an exchange agreement in which the respondent was to be given 30 acres in exchange for a motor vehicle. The applicant filed a counter claim the basis upon which he brought this application for injunction. The applicant contends that on 26.11.2010, he entered into an exchange agreement with the respondent in which the respondent agreed to give him his motor vehicle registration number KAX 206N an Isuzu Truck in exchange of his 30 acres entitlement from a property owned by his late father which is now being administered by his mother the second applicant. The respondent took immediate possession of the 30 acres upon execution of the agreement. The applicant also took possession of the motor vehicle which was duly transferred into his name. The 2nd applicant who is the administrator of the estate of the late father of the first applicant duly signed a vesting order transferring 30 acres of the land which had been exchanged with a motor vehicle.

Th applicant contends that he later noticed that the details in the logbook were not tallying with the details on the motor vehicle. He wrote to the Kenya Revenue Authority asking them to confirm the authenticity of the logbook. The Kenya Revenue Authority wrote to him asking him to avail the motor vehicle together with its documents for verification. The applicant in the process learnt that the motor vehicle in issue was under investigations by the Kenya Revenue Authority and that it had been circulated in the press as one of the vehicles which were under investigations by the Revenue body. He brought this to the attention of the respondent and asked him to make good any anomalies detected by the Kenya Revenue Authority but that the respondent declined to do so. The applicant then went and deposited the motor vehicle at Kitale police station allegedly on instructions of Kenya Revenue Authority personnel. It is on this basis that he seeks the injunctive orders arguing that the respondent did not pass a clean vehicle to him.

The respondent opposed the application through a replying affidavit sworn on 18th

October,2013 and on a further replying affidavit sworn on 22.11.2013. The respondent contends that the applicant is seeking in essence what amounts to a mandatory injunction which cannot be granted. The respondent contents that he has been in possession of the suit land for three years and as such the injunction sought cannot be granted. He contends that he fulfilled his part of the agreement and that there is no way the vehicle would have been registered and later transferred to the applicant if there were any outstanding issues with the Kenya Revenue Authority. He contends that it is the applicant who took the motor vehicle to Kitale police station on his own volition and he cannot therefore be heard to be complaining that the is not benefiting from it.

I have carefully gone through the applicant's application as well as the supporting documents. It is clear from the supporting documents that the applicant started pushing Kenya Revenue Authority to give him the status of the motor vehicle after the respondent sued him and his mother Prior to the filing of a a suit against the applicants, there is nothing to show that there was anything wrong with the motor vehicle. The allegation by the applicant that details in the logbook were not tallying with the details on the motor vehicle are not supported by either the applicant or the Kenya Revenue Authority. The last correspondence from Kenya Revenue Authority is dated 10.9.2013 This is the letter in which Kenya Revenue Authority indicates that there was undervaluation of duty. The letter does not indicate whether the respondent was privy to the undervaluation and as such, there is no basis upon which the court can hold that the respondent knew that duty on the vehicle was not paid as required.

The Kenya Revenue Authority has never impounded the motor vehicle. What the newspaper advertisement indicated was merely that the vehicle was among those under investigations. The results of the investigation if any have never been communicated to the respondent. The correspondence mentioned hereinabove was addressed to the care of the applicant who was the one who had asked the Authority to tell him if the motor vehicle was okey. There is need to inquire into how the undervaluation if any came about. Assessment of duly payable is done by officials of KRA. A client only pays what he is asked to pay. The vehicle as at present is duly registered in the name of the applicant who has been using it until he surrendered it to Kitale Police Station.

It is not possible in the circumstance to issue an injunction which will result in the respondent being removed from the suit land before the case is heard and determined . I find that the application lacks merit. The same is hereby dismissed with costs to the respondent.

It so ordered.

Dated, signed and delivered at Kitale on this 21st day of January,,2014.

**E.OBAGA**

**JUDGE**

**In the presence of :-**

Mr. Bundi for applicant

Ms Munialo for the respondent.

Court clerk – Kassachoon.

**E. OBAGA**

**JUDGE**