



**REPUBLIC OF KENYA**

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

**ENVIRONMENTAL AND LAND CASE NO. 173 OF 2013**

**KENNEDY MOLLO LOGILAE..... PLAINTIFF**

**VERSUS**

**1. PETER LOKOL**

**2. COUNTY GOVERNMENT OF TURKANA..... DEFENDANTS**

**R U L I N G**

The applicant brought a notice of motion dated 17th December, 2013 in which he seeks an injunction restraining the defendants by themselves, their servants or their agents or anyone claiming through them from trespassing, entering, constructing, alienating or in any way interfering with the applicant's use of plot No 726, Kanamkemer Lodwar Town pending hearing and determination of this suit.

The applicant contends that he was allotted plot No. 726/Kanamkemer Lodwar township hereinafter referred to as “the suit land” by the predecessor of the second respondent that is municipal council of Lodwar. He annexed a copy of the allotment letter marked “KMLI”. The allotment was jointly made in his name and that of his wife. He contends that he has since been paying all statutory charges in respect of the suit land.

On 22nd November, 2013, the applicant received a letter signed by the first respondent asking him to remove a barbed wire fence round the suit land. The applicant contends that he has been in peaceful occupation of the suit land since 1992 until 22/11/2013 when the first defendant alleged in his letter to him that the suit land had a dispute between him and Juluk community.

The applicant instructed his lawyers who wrote a letter to among others the second respondent raising concern about the new developments. On 24/11/2013 the County askaris pulled down his barbed wire fence and on 30/11/2013, the respondents put a new fence round the plot prompting the applicant to move to court for protection.

The respondents filed a memorandum of appearance through their lawyers Messers Kidiavai & Co. Advocates, on 7/1/2014. This application was brought to court under certificate of urgency on 18/12/2013. The respondent's advocates were indulged until 28/1/2014 but come that date, they had not filed any response to the applicant's application. An application for further indulgence was rejected and the applicant proceeded to urge his application as it was not opposed.

I have gone through the documents annexed to the applicant's application. It is clear that the suit land was allotted to the applicant in 1992. The suit land was thereafter surveyed by the Ministry of Lands as confirmed by letter dated 11/4/2013

The principles of grant of temporary injunction are now well settled. An applicant has first to show that he has a prima facie case with probability of success. Secondly an applicant is expected to demonstrate that if an injunction is not granted, he will suffer irreparable loss which may not be compensated in monetary terms. Thirdly if the court is in doubt, it will decide the application on a balance of convenience.

In the present case, it is clear that the suit land was allotted to the applicant. He has been in occupation since 1992. There is nothing to show that there has been any dispute between the applicant and anyone else. A letter from the County Government of Turkana show that the suit land has a dispute between the applicant and Juluk community.

The dispute appears to have cropped up after 21 years of uninterrupted occupation by the applicant. The applicant has been paying all the statutory charges as required. The defendant/Respondent's having failed to show that there is indeed any dispute between him and the Juluk community, I find that the applicant has demonstrated that he has a prima facie case against the respondent. He is entitled to an injunction as prayed. I therefore confirm the temporary injunction granted in favour of the applicant on 18/12/2013.

The respondents are hereby injuncted from in any manner interfering with the suit land until hearing and determination of this suit. The applicant shall have costs of this application payable by the respondents.

It is so ordered

Dated, signed and delivered at Kitale on this 11th day of February, 2014.

**E. OBAGA,**

**JUDGE**

In the presence of Mr Samba for Plaintiff and M/S Nyakibia for defendants. Court Clerk – Kassachoon.

**E. OBAGA,**

**JUDGE**

**11/2/2014**