

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 62 OF 2014

EPUYO LOWOTON.....PLAINTIFF

VERSUS

NATIPO LOCHAMPA.....DEFENDANT

RULING

1. The applicant Epyuo Lowoton brought a notice of motion dated 03/04/2014 seeking a temporary injunction restraining the defendant/Respondent, his servants, agents and/or anybody purporting to act for him or through him from trespassing upon or committing any acts upon the plaintiff's Plot No. 214 "B" Kanamkemer Lodwar in Turkana County pending the hearing and determination of the suit. He also prays that the OCS Lodwar Police Station do supervise compliance of the court's order. He also prays for costs.
2. The application was served upon the respondent who neither entered appearance nor filed a replying affidavit in opposition to the same. The respondent contends that he bought the suit land from the respondent in 2004 at Shs.38,000/=. He annexed a copy of the agreement.
3. The applicant then went to Lodwar Municipal Council who issued him with a letter of allotment. The plot was subsequently demarcated by the Ministry of lands.
4. I have looked at the applicant's documents annexed to the supporting affidavit. The document referred to as an agreement does not state which plot was being sold to the applicant. Whereas the applicant contends that he bought the plot from the respondent in 2004, he has annexed a letter of allotment from the Municipal Council of Lodwar indicating that the plot was allocated to the applicant during a plots allocation meeting held on 24/9/1992.
5. What is interesting is that the letter of allotment is dated 20/6/2004 whereas the allocation is said to have been done on 24/9/1992. If the plot had been allocated to the applicant in 1992, why was he then buying the same from the respondent in 2004?
6. There is a letter from the Town Clerk of Lodwar Municipal Council dated 7/10/2005. The letter shows that the respondent has fenced off a public road and has encroached on to the applicant's plot. If this is the case, then the dispute herein relates to a boundary dispute. This dispute cannot be resolved through injunctive orders which will result in the respondent being removed from the plot without the applicant proving that there is indeed such encroachment.
7. What in essence the applicant is seeking is a mandatory injunction removing the respondent from the plot. This cannot be granted. I find that the applicant has not demonstrated that he has a prima facie case with probability of success or that he will suffer injury which is irreparable. The applicant's application is hereby dismissed with no order as to costs.

It is so ordered.

Dated, signed and delivered at Kitale on this 3rd day of June, 2014.

E. OBAGA

JUDGE

In the presence of Mr Bororio for applicant. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

3/6/2014