

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 57 OF 2014

ERUSTUS MANYONGE PLAINTIFF

VERSUS

RISPER NASIPWONDI DEFENDANT

RULING

1. The applicant brought a notice of motion dated 28/3/2014 seeking for a temporary injunction restraining the defendant/respondent by herself, agents and or servants from in any way interfering with or impeding the plaintiff/Applicant's peaceful and quiet occupation,cultivation and unlimited user of that parcel of land measuring oneacre situated at three rivers farm LR 5364/2 purchased from one Maurice Wanjala Butali. The applicant also seeks costs of the application.
2. The respondent who was duly served neither filed grounds of opposition nor replying affidavit to the application. The application therefore proceeded ex-parte.
3. The applicant contends that on 5/4/1994 he bought the suit land from his father. That he has been in occupation of the same since then and that recently, the respondent came and threatened to invade the land on the basis that she was wife of his father who has since died.
4. The applicant contends that the respondent was at some stage cohabiting with his father but that she later deserted him.The applicant has now come back asserting rights of a wife. It is on this basis that he wants the respondent restrained from interfering with the suit land as he claims that if the injunction is not granted, he willsuffer irreparable loss.
5. I have gone through the applicant's application as well as the plaint filed herein. I have now to decide whether the applicant is entitled to the orders he is seeking. The applicant has annexed a copy of a sale agreement dated 5/4/1994. In this agreement it is shown that the applicant bought one acre from Maurice Wanjala Butali at Kshs.45,000/=.
6. The principles for grant of an injunction are now well settled. First an applicant has to show that he has a prima facie case with a probability of success. Secondly, an injunction will not normally be granted unless otherwise the applicant will suffer irreparable injury which may not be compensatable in an ward of damages. Thirdly, if the court is in doubt it will decide the application on a balance of convenience.
7. The applicant contends that the respondent was once cohabiting with his father but that she deserted him and she has now come to assert the rights of a wife. The applicant has not disclosed when his father died or when the respondent allegedly deserted his father. The applicant is also not disclosing where the respondent and his father were residing during the alleged cohabitation. The mere fact that he has exhibited a copy of sale agreement is not enough to show that the land is his and that the respondent has no right to the same. It may well be that the respondent deserted his father but that does not mean that she lost interest in the land of her husband. An injunction is an equitable remedy and whoever comes to invoke its aid must disclose all material facts for him to get the same. In the circumstances of this case, the applicant has not demonstrated that he has a prima facie case with a probability of success or that he will suffer injury which might not be remedied by an award of damages. The application by the applicant fails on these grounds. The same 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 Ingosi for Mr Ocharo for applicant. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

3/6/2014