



REPUBLIC OF KENYA

High Court at Kitale

Environmental & Land Case 30 of 2013

PETER MUTACHO MISIKO..... PLAINTIFF

VERSUS

BONFACE MISIKO MUTACHO.....}

NATHANIEL MASIBO}

ISAAC KHISA}

DISMAS MWISAMBA}

GEORGE KIRUI}

PATRICK WANJALA MISIKO.....}

PATRICK WANJALA MISIKO} DEFENDANTS

R U L I N G

The Applicant herein Peter Mutacho Misiko brought an application seeking a temporary injunction seeking to restrain the Respondents, their agents, servants and all those claiming under them from entering, sub dividing, selling, leasing, alienating or in any other way interfering with his Plot No. 435 at Maridadi Settlement Scheme. The Applicant was granted a temporary injunction pending hearing inter-partes. All the Respondents were duly served for inter-partes hearing but none filed either Replying Affidavit or Grounds of Opposition or both.

The 1st to 4th Respondents are sons of the Applicant. The 5th and 6th Respondents are grandsons of the Applicant. The Applicant is owner of Plot No. 435 at Maridadi Settlement Scheme the same having been allocated to him by the Land Adjudication and Settlement Department Trans-Nzoia. The land is 5 acres and he is still paying a loan for it to the Settlement Fund Trustee. Sometime in early 2013, the Respondents reported the Applicant to the District Officer Kwanza Division over a dispute over the land. By a letter dated 01/02/2013, the District Officer Kwanza Division summoned the Applicant to his office whereby the Applicant was forced to enter into an agreement that he was to subdivide his land and give each concerned party one acre each. The Respondents have since that agreement pushed the Applicant into subdividing his land to which he does not want. The Applicant contends that if he were to give one acre each as per the agreement, it will not be enough for himself and his sons and those who will miss out will cause chaos in the family.

From the agreement which was signed before the District Officer Kwanza Division, it shows that the Applicant has four living sons and two who have died. This therefore means that the Applicant has six

sons and it will therefore not be practicable for each to get an acre from the 5 acres. Whoever drafted the agreement seems to suggest that the ones who participate in paying off the outstanding loan to the Settlement Fund Trustee should benefit and the one who do not should miss out on the one acre. This is an arrangement which will cause chaos than settle the matter. Besides this, the Respondents cannot force their father and grandfather to subdivide his land during his lifetime. If the Applicant has accommodated them on the land as his sons and grandsons, they cannot force him to subdivide the land in a manner which is not practicable. I find that the Applicant has demonstrated that he has a prima facie case with a probability of success. The temporary injunction granted against the Respondents on 15/03/2013 is hereby confirmed. It shall last until the hearing and determination of this case. Costs of this application shall be in the cause.

It is so ordered.

Dated, signed and delivered in Open Court on this 7th day of May, 2013.

**E. OBAGA
JUDGE**

In the presence of Mrs. Munialo for Plaintiff/Applicant

Court Clerk: Joan

**E. OBAGA
JUDGE**

07/05/2013