

REPUBLIC OF KENYA

High Court at Kitale

Environmental & Land Case 26 of 2013

PAUL WANYONYI MAKOKHA..... PLAINTIFF

VERSUS

CATHERINE NALIKA DEFENDANT

R U L I N G

The Applicant brought a Notice of Motion dated 11th March, 2013 seeking a mandatory injunction to remove the Respondent/Defendant, her agents, servants and all those claiming under her from Plot No. 76 Sinoko Farm pending hearing and determination of the main suit. The Applicant contends that he is the owner of Plot No. 76 Sinoko Farm, the same having been transferred to him by his father Wafula Kimalilo who was a shareholder with Trans-Nzoia Co. Ltd. In 2007, the Respondent sued the Applicant's father at Kaplamai Land Disputed Tribunal. The Respondent is stepmother of the Applicant. The Tribunal ruled that the Respondent was entitled to 2 acres at Chesikaki Farm the original home of her husband and two acres at Sinoko Farm. Documents annexed to the Applicant's application show that the Respondent has plot No. 100 at Sinoko Farm which is about 2 acres. The Applicant also has about another two acres being Plot No. 76. The Applicant contends that on 27/02/2013, the Respondents and her children invaded his land and erected structures thereon. He annexed photographs of pictures showing newly erected structures. The Applicant further contends that prior to this invasion, the Respondent had tried to evict the Applicant from the land using a decree in Kitale Principal Magistrate's Court Land Case No. 107 of 2007 but could not succeed as the Plot was not the one in which the elders at Kaplamai Land Disputes Tribunal had awarded her.

The Respondent in her Replying Affidavit in opposition to the Applicant's application stated that she does not reside on the land and that it is her children who reside on the land having occupied the same on 27/02/2013 and that since her sons are adults, they ought to have been sued in their individual capacity. It is clear from the application herein that the Applicant is the owner of Plot No. 76 Sinoko Farm. The Respondent does not lay any claim over the same. The proceedings from the Kaplamai Land Disputes Tribunal clearly show that she was given 2 acres at Chesi Kaki Farm and another two acres at Sinoko Farm. The Defendant/Respondent has not filed anything to contradict this position. It is clear that the invasion of the land of the Applicant through her sons is an act which is done with impunity. She or her sons have no claim over the land in issue and if they had any claim, they should have at least shown that in the Replying Affidavit or in Statement of Defence.

This is not the case herein. The law regarding grant of mandatory injunction is now settled. A mandatory injunction can be granted where it is shown that the matter is one which can be decided at once. As in this case, it is clear that the Respondent's sons have invaded the land and they cannot be allowed to enjoy the same when their entry is clearly illegal and without basis. This is a case where a summary remedy can be available. I find that this is a clear case where a mandatory injunction ought to be given. I allow the application as prayed. The Applicant shall have costs of this application.

It is so ordered.

Dated, signed and delivered in Open Court on this 6th day of May, 2013.

**E. OBAGA
JUDGE**

In the presence of M/S Munialo for Applicant and M/S Arunga for Respondent. Court Clerk:
Kassachoon.

E. OBAGA
JUDGE

06/05/2013