



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC NO. 13 OF 2020

DICKSON ESHO (suing as a personal rep.

of the estate of RETETI ESHO (deceased).....PLAINTIFF

-VERSUS-

SUIYANKA MAYUNE (sued in his capacity as personal rep.

of the estate of KIRONGIS OLE MAYONE (DECEASED).....1ST DEFENDANT

ELIZABETH SIAMANTA YIAILE.....2ND DEFENDANT

PATITA KEIWUA.....3RD DEFENDANT

RULING

The Plaintiff/Applicant had by a Notice of Motion dated 24th June, 2020 sought for orders of a temporary injunction barring the District Land Registrar Narok from visiting Land parcel Narok/Cis Mara/Enabelbel/Enengatia/258 with the intention of fixing boundaries between the aforementioned land parcel and Land Parcel No. Narok/Cis Mara/Enabelbel/Enengatia/257 pursuant to and in compliance with the orders of Narok Chief Magistrate in ELC Suit No. 133 of 2018 pending the hearing and determination of the suit herein. The Application is based on the grounds that the 1st Defendant had obtained Judgement in Narok Chief Magistrate's Court ELC No. 133 of 2018 in which the court had determined and directed that the boundaries of the two parcels of land be fixed and determined.

The Applicant further argued that he was not a party to the aforesaid suit and as a result the respondents had omitted the determination of the boundaries of land Parcel Narok/Cis Mara/Enabelbel/Enengatia/1220 and 1221 whose boundaries are also in dispute as the Magistrate Court was misled to usurp the jurisdiction of the District Land Registrar to determine the boundary dispute and thus the applicant seeks the intervention of this court to arrest the execution of the judgement. The application was further supported by the affidavit of the Applicant.

The 1st Defendant had opposed the said application and filed 7 grounds of opposition thereto in which he stated that the suit is incurably defective as the applicant does not disclose any cause of action and that the remedy sought is untenable in law.

The 1st respondent further contends that the applicant is introducing a claim already heard and determined vide Narok ELC Appeal No. 3 of 2019 and Narok ELC Magistrate Court ELC No. 133 of 2018 and further that the applicant has not demonstrated what prejudice they will suffer and that the instant suit contravenes the provisions of section 18 and 19 of the Land Adjudication Act. The 2nd and 3rd Respondent had indicated during the mention of the matter that they did not intend to file any response or submit the issues raised.

I have considered the application and the 1st Respondent's grounds of opposition to the same. This is an application in which the applicant seeks the equitable remedy of injunction to restrain the District Land Registrar from visiting and determining the boundaries of Land Parcels Narok/Cis Mara/Enabelbel/Enengatia 257 and 258. The Applicant had indicated that the aforesaid visit was pursuant to a judgement delivered by the Narok Chief Magistrate Court in ELC No. 133 of 2018.

The grounds upon which the orders of injunction as prayed for by the Applicant are now settled as held in the case of **Geilla –Versus- Cassman Brown(1975)EA** which are whether the applicant has demonstrated a prima facie case with probability of success, whether damages will be adequate compensation and in whose favour does the balance of convenience lies.

The 1st Respondent in opposition to the application had stated that the application is incurably defective as the applicant seeks to introduce issues that have already been determined in Narok Chief Magistrate ELC No. 133 of 2018.

From the pleadings it is clear that the order that the applicant seeks is to stop the District Land Registrar from determining the boundaries.

Having considered the application before me I find that the applicant has improperly filed the instant application before this court their main grievances in the application and the suit is as a result of the determination of Narok CMC ELC No. 133 of 2018 the applicant ought to have either applied for a stay before the said court or moved this court by way of an application neither of which they did but preferred to file a fresh suit and the instant application.

From the above it is my finding that the applicant has failed to establish a prima facie case with a probability of success and on that ground alone the instant application fails and I need not delve on the grounds that one must satisfy to be granted orders of injunction and consequently the application lacks merit and I thus dismiss the Notice of Motion dated 24th June, 2020 with costs.

DATED, SIGNED and DELIVERED in open court at NAROK on this 12th day of November, 2020

Mohammed N. Kullow

Judge

12/11/2020

in the presence of: -

CA:Chuma

Mr Langat holding brief for Koech for the plaintiff

Ms Karia holding brief for Muigai for the 1st defendant

N/A for the 2nd and 3rd defendant

Mohammed N. Kullow

Judge

12/11/2020