



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC NO. 70 OF 2018

SOLOMON PEITUM RIORETA.....PLAINTIFF

VERSUS

TOPEMUK RENGONO.....DEFENDANT

RULING

1. The Notice of Motion dated 25th July, 2018 seeks the following orders:

(a) That pending the hearing and determination of this application inter partes, the defendant himself, his agents or anybody claiming through him be restrained by a temporary injunction from constructing a house, using, occupying and/or any other way dealing with land known as Plot No. 279 Kanyarkwat Group Ranch.

(b) That at inter partes hearing prayer (2) above be confirmed until determination of this suit

(c) Costs of this application be provided for.

2. The Notice of Motion is founded on the grounds set out at the foot of the application and in the supporting affidavit of the applicant. These are that the applicant is a member of the Kanyarkwat Group Ranch; that originally **Plot Number 188** (hereinafter the suit land) was given to the applicant and one **Simon A. Peitum**; that after adjudication the same was divided into two portions, named as **Number 278** and **279** respectively; that the issue of ownership has been determined by the Assistant County Commissioner; that the respondent was at his request and owing to the applicant's goodwill was granted use of the suit land by the applicant but he is now constructing a house thereon which development is not authorised by the applicant.

3. The replying affidavit to the application was filed on **17/9/2018** by one **Rengono Todumuk Julius** who avers that both the applicant and the named defendant are unknown to him. However when the matter was adjourned to enable both parties be present in court so that the applicant may confirm whether the defendant is the person he intended to sue the applicant appeared in person on **15/10/2018** and identified the deponent who has not filed a response as the proper defendant. I hereby make a preliminary order at this stage that the name of the defendant in this suit shall be amended to read "**Rengono Todumuk Julius.**"

4. Away from the identity issues, the respondent avers that his father a member of the ranch owned **plot 216** on which the defendant lives; that he is not a relative of the applicant; that he never sought the applicant's permission to occupy his **Plot No. 279**; that he has never been on **Plot No. 279**; that he has not erected any developments on that plot and that he does not recognise the developments on that plot as depicted in the photographs annexed to the application to be his.

5. In a further affidavit dated **18th October 2018** the applicant responds to the respondent's replying affidavit and confirms that the plots mentioned are separate and distinct from each other; however he avers that he can identify one building with a blue roof in the photographs exhibited in the replying affidavit as the one constructed on his land and that his claims are properly directed to the defendant.

6. In my view the structures in the photographs exhibited by the applicant as **Exh. SPR5** are not similar to the ones exhibited by the respondent in **Exh. RTJ3 (a), (b), (c) and (d)**. No evidence to rebut the respondent's claims has been presented to court.

7. In my view there is really not sufficient evidence upon which this court can find that the applicant has established a prima facie case against the respondent to warrant the grant of an injunction.

8. As to damage, I find that if it were assumed to be the case that the house in the photographs exhibited by the respondent is the one that the applicant objects to in his application, the photographs themselves are evidence that the house is complete and there is nothing before this court to convince me that the house is unoccupied as yet.

9. I am not in any doubt in respect of the instant application to warrant the invocation of the rule as to balance of convenience.

10. Consequently I find that the application dated 25/7/2018 has no merit and the same is dismissed with costs to the respondent.

Dated, signed and delivered at Kitale on this 29th day of January, 2019.

MWANGI NJOROGE

JUDGE

29/01/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the applicant

Mr. Kiarie for the respondent

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

29/01/2019