



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 546 OF 2017

RUTANTA OLE KOISIKIR.....PLAINTIFF

-VERSUS-

NAYIARE ENE KOISKIRR.....1ST DEFENDANT

PAKINE OLE KOISIKIRR.....2ND DEFENDANT

TOPOIKA OLE KOISIKIRR.....3RD DEFENDANT

RULING

The Application before me is the Notice of Motion dated 9th November, 2017 seeking for orders of Injunction against the Respondents, their agents servants and/or employees from evicting, denying him access or dealing with Land Reference No. Cis-Mara/Ewaso Nyiro/2271 and 2272.

The Application was based on the ground that the Applicant is son of Kiporonyo Koisikir who was a member of Ewaso Nyiro Group Ranch and a bonafide allottee of the piece of land known as Cis-Mara/Ewaso Nyiro/254 and upon the death of his father, his widow the 1st Respondent was registered as the proprietor of the suit land and she has fraudulently in collusion with the 2nd and 3rd respondent presented an Application for consent to sub divide and transfer his father's parcel of land. The Application was further supported by the Affidavit of the Applicant.

In his affidavit the applicant averred that his father was the registered owner of the suit land and upon his death the register was substituted with the name of the 1st Respondent who is his mother and as a result of which he is entitled to a share of the deceased father's estate.

The Applicant further contends that the 1st, 2nd and 3rd respondents are his mother and brothers respectively and they have always been in occupation jointly and have shared the proceeds from the suit land whenever the same was leased to 3rd parties. However, he alleges that they have fraudulently presented to the Land Control Board an application for sub-division and transfer of the suit land and hence his filing of the present application.

The Application was opposed by the 2nd Respondent who had filed a replying affidavit and he confirmed that the Applicant and the 3rd Respondent are his brothers and the 1st Respondent is his mother.

It is the 2nd Respondent's contention that upon the death of their father in 1991 the suit land was never demarcated and he was thus not allocated any parcel with the Ewaso Nyiro Group Ranch and contrary to the Applicant's assertion it was their brother one Musuri Ole Koisikir who was actually registered as a member of the group and was allocated land parcel Cis Mara/Ewaso Nyiro/455 and 255 respectively.

I have read the application before me and I wish to point out that on 14th February, 2017 when this application came up for hearing before court I did direct with the consent of counsel for the parties that the Application shall be disposed off by way of written submissions. However, unfortunately none of the parties filed their submissions and on 16th March, 2018, I did order that I will proceed to write a ruling if the parties will not have filed their submissions.

At this juncture of the proceeding what is before me for determination was application for injunction and the grounds which an application of this nature is granted is not well settled.

From the pleadings before me the applicant contends that he is the son of one Kiporonyo Koisikir who died in 1996 and that the suit land was registered in the name of his father. He states that the respondents are his mother and brothers respectively. The Applicant has not in his

application shown that he is the administrator of the estate of his deceased father to the exclusion of the respondents therein.

It is now established that for one to benefit from the discretionary orders of injunction he must demonstrate that he has a prima facie case with a probability of success as held in the case of Geilla -Versus- Cassman Brown.

From the pleadings before me, I find that the Applicant has not satisfactorily discharged that the respondents are his mother and siblings who are in occupation of the suit land.

From the above I find that the allegations which are raised by the applicant relates to fraud which can only be determined at a full hearing and it is thus my finding that the Applicant having failed to establish a prima facie case the application must fail and I decline to grant the orders as prayed.

DATED, SIGNED and DELIVERED in open court at NAROK on this 18th day of JANUARY, 2019

Mohammed Noor Kullow

Judge

18/1/19

In the presence of:

CA:Chuma

Mr Kilele for the Plaintiff

Ms Maritim for the Defendants

Mohammed Noor Kullow

Judge

18/1/19