



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC NO. 44 OF 2018

NADUTARI KORIATA.....PLAINTIFF/APPLICANT

VERSUS

NAREIYO KORIATA.....1ST DEFENDANT/RESPONDENT

NDOVU ESTATE LTD.....2ND DEFENDANT/RESPONDENT

NAROK DISTRICT REGISTRAR.....3RD DEFENDANT/RESPONDENT

NAROK DISTRICT SURVEYOR.....4TH DEFENDANT/RESPONDENT

PROVINCIAL SURVEYOR,

RIFT VALLEY.....5TH DEFENDANT/RESPONDENT

RULING

By an Application dated 30th May, 2018 brought under order 50 Rule 1, 40 Rules 1, 2 and 3 and Section 3 and 3A of the Civil Procedure Act seeking a temporary order of injunction restraining the 1st and 2nd defendants from entering, cultivating, leasing or dealing with the Plaintiff's parcel of land known as NAROK/ CIS MARA/OLOLOLUNGA/483 pending the hearing and determination of the suit herein and the costs of the application.

The application was based on the grounds that the Plaintiff is the registered owner of the suit parcel No. NAROK/CIS MARA/OLOLOLUNGA/483 while the 1st Respondent is the owner of NAROK/ CIS MARA/OLOLOLUNGA/484 and that the 1st Defendant has crossed over to the Plaintiff's land unlawfully and leased a portion which measures about 130 acres and leased the same to the 2nd Respondent which has led him to loose income that accrued to him from leasing the annexed portion.

The Application is further based on the grounds that the 1st Respondent caused amendment to Registry Index Map (RIM) in the 2009 and forged mutation forms and did not seek the consent of the applicant.

In support of the grounds herein above stated the applicant filed a supporting affidavit to elucidate on the above on the above grounds. She stated that both her and 1st respondent were married to Samuel Koriata who owned land parcel No. NAROK/CIS MARA/OLOLOLUNGA/30 which was later sub-divided into six (6) plots for each of his wives in 1991 and their late husband used the main road as a boundary to separate four wives to the South and 2 to the North and none of the wives land crossed the main road and none denied access to the said road.

The Applicant states that she has been in possession of her portion of land measuring 352 hectares until 2001 when the 1st Respondent interfered with her possession of the land leading to changes in RIM and interference with the mutation forms and subsequently leading to the leasing of the land to the 2nd Respondent.

The Application was opposed by the 1st and 2nd defendants who respectively filed their replying affidavit. The 1st Respondent stated that the application before court lacks merit. However, she confirmed that the applicant is the owner of land parcel CIS MARA/OLOLOLUNGA/484 while she owns CIS MARA/OLOLOLUNGA/483. She stated that she owns and is in possession of parcel which is the subject of the instant application and that she was informed by her advocates that an injunction cannot be issued against a party which is in possession of that land.

The 1st Respondent further averred that even though her late husband had divided the land and the main Narok/Bomet Road was their

boundary, her late husband allowed her to cultivate a parcel across the road which was arable and further that the applicant has not been land locked as claimed. However, she admits that there are serious discrepancies on documentations.

The 2nd Respondent in his replying affidavit averred that the instant application is between the Applicant and the 1st Respondent and he just leased parcel No. CIS MARA/OLOLOLUNGA/483 which belongs to the 1st Respondent since 2012 and that they are innocent farmers caught up in a family dispute. He further stated that the land is under crop and any order of injunction will stop them from accessing their crops.

The Application was disposed of by way of written submissions. I have read the application before me and the submissions made by counsel for the parties and this being an application for injunction the grounds which upon the same can be granted is already settled in the case of **Geilla-Versus-Cassman Brown**.

In the instant case the issues between the parties are factual and are matters that can only be settled when the parties led evidence and witness testimony is made.

From the pleadings it is not disputed that there are two distinct parcels of land, however, the issue under contention is whether there is an overlap of Parcel No. CIS MARA/OLOLOLUNGA/483 to parcel 484 leading to the removal of a brace that was placed by the 1st and 2nd respondent's late husband and leading to change in RIM and mutation forms.

The above position is what can only be determined at a full hearing when evidence is heard and the court visits the locus in quo and for the above reasons, I find that it shall be prudent that the status quo prevailing at the moment be maintained pending the hearing and determination of the suit and the respondent cease leasing the disputed portion.

I wish to point out that attempt by the court to have the parties who are family did not yield much.

The net effect of the ruling is that each family continues to stay on their parcels as they are pending the determination of the suit.

I also direct that each party bears costs of the application.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **26th** day of **June, 2019**

Mohammed Noor Kullow

Judge

26/6/19

In the presence of:-

Mr Kinyanjui for the applicant

Mr Langat holding brief for Otieno for the respondent

CA:Chuma

Mohammed Noor Kullow

Judge

26/6/19