



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC CASE NO. 141 OF 2018**

**OLOPOI SOINE OLOIBOR OLGOS.....PLAINTIFF**

**VERSUS**

**MATINTI NDORKO.....DEFENDANT**

**RULING**

What is before Court for determination is the Defendant's Notice of Preliminary Objection filed on 18<sup>th</sup> April, 2019 in respect to the Plaintiff's Notice of Motion dated the 18<sup>th</sup> September, 2018 In the said Notice of Motion, the Plaintiff seeks for a temporary including mandatory injunction against the Defendant to restrain him from interfering with land parcel number KAJIADO/ LORNGUSUA/ 358 hereinafter referred to as ' the suit land' and the Officer Commanding Kajiado Police Station be ordered to ensure compliance of the said Court Order.

The Defendant has raised various grounds in the preliminary objection which are summarized as follows: that the application is an abuse of the court process; the instant suit as well as the criminal case No. 1358 of 2018 are not in pursuit of justice; the application falls short of the threshold established for grant of mandatory and temporary injunction; the prayers sought are not available to a party who grabbed land; Civil Procedure Rules has no provision for the Police to enforce orders of a Civilian Court; the grounds upon which the application is premised are contrary to the Law of Contract; Plaintiff has never been in physical possession of the suit land; Defendant discovered that the suit land was fraudulently transferred ; there is no Sale of Land by public 'baraza' and the Plaintiff has not demonstrated the irreparable danger he stands to suffer.

The Defendant filed his submissions but the Plaintiff failed to do so

**Analysis and Determination**

Upon consideration of the Notice of Preliminary Objection filed on 18<sup>th</sup> April, 2019 and the Notice of Motion dated the 18<sup>th</sup> September, 2018 the only issue for determination is:

Whether the Plaintiff's Notice of Motion dated 18th September, 2018 is an abuse of the court process and should be dismissed.

In the Notice of Motion dated the 18<sup>th</sup> September, 2018 the Plaintiff sought for temporary and mandatory injunction against the Defendant in respect of the suit land. The Plaintiff claimed he had purchased the said land from the Defendant in 2004 and took possession. He was registered as the proprietor of the suit land on 16<sup>th</sup> March, 2004 which fact is disputed by the Defendant who claims the said registration was obtained fraudulently. In 2015, the Defendant filed a suit in the Chief Magistrate's Court vide Kajiado CMCC No. 565 of 2015 but the same was dismissed for non attendance. The Plaintiff contended that in 2015 the Defendant had forcefully entered the suit land and put up temporary structures thereon claiming ownership but he was charged in a criminal case for trespass, forcible entry as well as forcible detainer at the Chief Magistrates' Court at Kajiado.

The Defendant has hence filed the instant preliminary objection and seeks for the Notice of Motion to be dismissed. He has relied on the case of *Mrao Ltd vs First American Bank of Kenya Ltd (2003) eKLR*; *Suleiman Vs Amboseli Resort Ltd (2004) KLR 589*; *Chariman Cooperative Tribunal & 8 Others Ex parte management Committee Konza Ranching & Farming Cooperative Society Ltd (2014) eKLR* to support his Preliminary Objection.

In the case of *MRAO VS FIRST AMERICAN BANK OF KENYA LTD & TWO OTHERS C.A CIVIL APPEAL No. 39 of 2002 (2003) K.L.R 125* the Court described a prima facie case as follows:

**“..... is a case which, on the material presented to the Court, a tribunal properly directing itself will conclude that there**

**exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.**

From the annexures in the Notice of Motion, I note the Plaintiff is the registered proprietor of the suit land. Whether he was registered fraudulently or not is an issue which cannot be determined at this juncture but once viva voce evidence is adduced. From the averments in the affidavit, the Plaintiff claims the Defendant has trespassed on the suit land and put up structures thereon. Further, that the Defendant has actually been charged in a criminal case for entry into the suit land.

In relying on the facts as presented and the above-cited judicial authority, I find that the averments in the Notice of Motion are triable issues and not an abuse of the court process as claimed by the Defendant.

I further wish to associate myself with the findings in the case of **Suleiman Vs Amboseli Resort Ltd (2004) KLR 589** and hold that the mere fact of the Plaintiff having been registered as the proprietor of the suit land from 2004 to date is indeed a triable issue and hence the instant Notice of Motion cannot be deemed to be an abuse of the court process as claimed by the Defendant.

In the circumstances, I find the Notice of Preliminary Objection filed on 18<sup>th</sup> April, 2019 unmerited and will proceed to dismiss it.

Costs will be in the cause.

**Dated signed and delivered in open court at Kajiado this 22<sup>nd</sup> day of July, 2019**

**CHRISTINE OCHIENG**

**JUDGE**