



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC NO. 331 OF 2017

JOSEPH OLOINYEYIE NAITIPA.....PLAINTIFF

-VERSUS-

PAUL MOMANYI OSORO & ANO.....DEFENDANTS

RULING

The Application before me is the Notice of Motion dated 4th December, 2018 and brought under order 40 Rule 1 of the Civil Procedure Rules and order 8 Rule 3,4 and 5 in which the Applicant seeks orders of temporary injunction against the 1st Respondent from entering, leasing and/or interfering with his peaceful occupation of land parcel Trans Mara/Moita/294. The application was based on the grounds that the Applicant has been in possession of the disputed parcel of land for decades and the Respondent has recently threatened him and further that since he has been in occupation his rights and interests are advance to those of the respondent. The Application was also supported by the Supporting Affidavit of the Applicant who deponed on facts hereinabove mentioned.

The application was opposed by the 1st Respondent by way of a replying affidavit. He averred that the Applicant is not in possession of the suit land and having no possession he cant be granted an order of injunction as he has not laid down the grounds for the grant of the said orders. The Respondent further contends that he is the registered owner and he never evicted the Applicant from the said parcel as he has leased it to other people and that it is not true that the land overlaps with that of the applicant and the same is currently leased to the third party.

I have considered the application before me and submissions made by counsels the grounds upon which the orders of injunction can be granted are now well settled. That is whether the applicant has established a prima facie case, whether damages will be adequate compensation and in whose favour does the balance of convenience tilts.

In the instant application the applicant contends that he has been in possession the land for over a period of 30 years and he doesn't have title to the same and he faces eviction.

The 1st respondent contends that the applicants have never been in possession and he is the registered owner of the land and the same is currently leased to a third party.

From the pleadings the Applicant has not demonstrated that he has prima facie case. The issues in contention are facts which are derived by the facts that can only be determined at a full hearing where witness testimony is taken and for the above reasons, I find that the application before me is one that has not satisfied the grounds for grant of prayers sought and in the circumstances I order that pending the hearing of the suit parties status quo be maintained by the parties.

As to costs each party to bear its costs.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this 22nd day of **July, 2019**

Mohammed Kullow

Judge

22/7/19

In the presence of: -

Mr. Onderi for the Plaintiff

Mr. Kiptoo holding brief for Morintat for the 2nd defendant

CA:Kimiriny

Mohammed Kullow

Judge

22/7/19