



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 170 OF 2017

GEOFFREY LUTILO YABUNA.....PLAINTIFF

VERSUS

ANTHONY MUNENE1ST DEFENDANT

LAND REGISTRAR TRANS-NZOIA COUNTY.....2ND DEFENDANT

THE ATTORNEY GENERAL.....3RD DEFENDANT

RULING

1. The Notice of Motion dated 25/6/2019 and filed by the 1st defendant/applicant on the same date seeks the following orders:

(1) ...spent

(2) ...spent

(3) That the *status quo* be maintained pending the hearing and determination of this suit.

(4) That a temporary injunction be issued restraining the respondent/plaintiff either by himself or through his agents, servants, employees, assigns, representatives or any person claiming through him from encroaching, trespassing, entering or interfering in any manner whatsoever with parcel of land known as KITALE MUNICIPALITY BLOCK 5/152 pending the hearing and determination of this suit.

(5) 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 plaintiff sworn on even date. These are that the applicant/defendant is the bona fide owner and is in possession of the parcel of land known as Kitale Municipality Block 5/152, the suit property; that the respondent/plaintiff is wrongfully attempting to enter into the said land and is erecting a fence around the plot as a consequence whereof, the applicant will suffer loss and damage; that the respondent/plaintiff threatens and intends, unless restrained by this court, to continue with the process of erecting a fence on the applicant's land with no right or justification whatsoever; that the applicant has attempted to stop the respondent and his agents from encroaching on the suit land by instituting a complaint at the Kitale Police Station vide the OB No.51/24/6/2019 but all in vain; that the respondent, earlier in 2017, obtained court orders fraudulently claiming to be in possession, which orders that were overturned by this court on the 14/12/2017; that this matter has been fixed for hearing on the main suit on 9/7/2019 and that the respondent/plaintiff should be patient for the outcome of the case and that the respondent/plaintiff will not be prejudiced in any way if the orders prayed for are granted.

3. The respondent/plaintiff filed a replying affidavit dated 12/7/2019 and he opposes the motion dated 25/6/2019 on the basis that the land parcel does not belong to the applicant as alleged; that he has been issued with a certificate of title to the same; that he is entitled to full use and occupation thereof; that he had fenced the land but the applicant unlawfully removed the fence; that upon the applicant's complaint with the National Land Commission it was found that the letter of allotment allegedly issued to the applicant is a forgery and a recommendation was made that he be issued with a certificate of lease.

4. It is correct that an application dated 30/11/2017 was filed by the 1st defendant/applicant herein seeking among other orders that this court be pleased to set aside the order of injunction issued against the defendant on 27/10/2017 in respect of the plaintiff's application dated 23/10/2017, and allow the application proceed inter-partes on its merits with both parties in attendance.

5. The main ground for the application of **30/11/2017** was that the 1st defendant was not served with pleadings and summons to enter appearance and the application dated **23/10/2017**. It is also correct that the order of injunction obtained by the plaintiff was on **14/12/2017** set aside by consent of the parties which was adopted as the order of the court. The same setting aside was further confirmed by way of a written consent signed by the parties counsel filed on **14/12/2017** and application dated **30/11/2017** was marked as settled.

6. Thereafter the application dated **23/10/2017** was not revisited as the parties pursued the filing of further pleadings whose gate had been reopened by the consent. It is evident that the matter took another direction whereby it was fixed for substantive hearing of the suit but by the time the current application was filed no hearing had commenced.

7. What I must determine is whether the *status quo* on the ground should be maintained. No evidence has been taken in this matter. However documents exhibited by the plaintiff point to the possibility that the plaintiff and the National Land Commission have been active in respect of the land subject matter of this suit while the suit was still pending.

8. Matters undertaken by the parties and with knowledge of a pending suit while the suit is still pending and without leave of this court should not attract respect by this court and on certain occasions may be termed as disrespect or outright, punishable contempt.

9. It must be remembered that it is the plaintiff who came to court seeking a declaration that the land belongs to him and seeking an injunction against the defendant from interference with it.

10. It is apparent that no certificate of lease had been issued to the plaintiff by then but now the replying affidavit dated **12/7/2019** exhibits a certificate of lease in the name of the plaintiff issued on **5/7/2019**.

11. This development comes hot on the heels of an amendment of the plaint to include an order directing the 2nd defendant that is the Land Registrar Trans-Nzoia County to register forthwith the lease issued in favour of the plaintiff by the Chief Land Registrar on **22/9/2017**.

12. It is therefore clear that the plaintiff has been driving the process of issuance of a certificate of lease in his favour before this court pronounce itself of the merit of the case he has brought against the defendant.

13. It must not be forgotten that there are defences of the 1st, 2nd and 3rd defendants on the record denying the plaintiff's claim and that the suit has not been heard. This must also be viewed through the prism of the consent orders vacating the injunction previously issued in favour of the plaintiff and the failure of the plaintiff to pursue the application dated **23/10/2017** as well as the gravitation of the parties and the court towards the setting down of the main suit for hearing. When all is done it is clear that the only remedy that readily presents itself is the maintenance of the *status quo* on the ground as sought in the application dated **25/6/2019**.

14. For the above reasons I find that application dated 25/6/2019 has merit and I grant it in terms of prayers No. 3 and 4 thereof. The costs of the application shall be in the cause.

Dated, signed and delivered at Kitale on this 30th day of September, 2019.

MWANGI NJOROGE

JUDGE

30/9/2019

Coram:

Before: Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Ambutsi for Applicant

Ms. Arunga for the Respondent

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

30/9/2019