



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 186 OF 2017

SABUNA WANYONYI ISACK

LILIAN NABANGALA KAKAIPLAINTIFFS

PETER KAKAI SIMIYU

TIMOTHY WANGILA KIRWAKE

PAUL KISAKA

FLORENCE MINYASHI KHAOYA

VERSUS

COUNTY GOVERNMENT OF TRANS-NZOIA.....DEFENDANT

R U L I N G

1. The instant application dated 14/12/2017 seeks a temporary injunction to restrain the defendant from trespassing upon, demolishing structures on, or evicting the occupants of **Unsurveyed Residential Plots Nos. "H", "K", "I", "B", "F", "G" and "E"** within Kitale Municipality Trans-Nzoia County. The application is supported by a supporting affidavit of one Peter Kakai Simiyu dated 14/12/2017.
2. The applicants allege to be lawful allottees to the premises, having been granted the same by the Government of Kenya. They exhibit copies of Letters of Allotment to that effect. They claim that they have already accepted the offers of allotment. They also exhibit copies of receipts issued by the County Government of Trans-Nzoia (in respect of property rates payments) and other issued by the National Government, Department of Lands. The copies of Letters of Acceptance are also exhibited.
3. The respondent, the County Government of Trans-Nzoia, filed grounds of opposition to the application, dated 11/1/2018. Their response is that the applicants have not established a prima facie case with a probability of success, that the applicants have not demonstrated that they would suffer irreparable damage if the orders sought are not granted and that the balance of convenience in this case tilts in favour of the defendant. They seek that the application be dismissed with costs.
4. In his submission Mr. Karani stated that the applicants are on the premises on the basis of temporary occupation licenses, that the suit is defective for want of particulars, that the 3rd applicant has not shown that the bulldozers that ambushed the applicants have not been shown to belong to the defendant. He stated that there is no intent threat of eviction by the defendant. He urged that an injunction would be in vain and a waste of court's time and it is unnecessary. The counsel for the defendant urged that the applicants have not shown that they would suffer and sought that the application be dismissed.
5. I have scrutinized the application and the grounds of opposition. I have considered the rival submissions of the parties. The defendant never filed a replying affidavit. The defendant therefore does not appear to be raising any factual issues in response to the affidavit of the 3rd applicant though those matters raised therein are yet to be proved at a main hearing of the suit, in my view they are sufficient to establish a prima facie case on the part of the applicants.
6. The application by the applicants therefore has merit. It is not clear how the balance of convenience would tilt in favour of the defendant without any factual background being laid for such a claim by way of a replying affidavit. I must reject that argument.
7. I therefore issue a temporary injunction restraining the defendant from trespassing upon, evicting the occupants of the subject plots as

prayed in **prayer No.2** of the application pending the hearing and determination of the suit. The costs of this application shall be in the cause.

Dated, signed and delivered at Kitale on this 28th day of February, 2018.

MWANGI NJOROGE

JUDGE

28/2/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty/Collins

Ms. Sitati holding brief for Ms. Arunga for Plaintiff

Mr. Karani holding brief for Yego for Defendants

COURT

Ruling read in open court in the presence of counsel for the parties.

MWANGI NJOROGE

JUDGE

28/2/2018