



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 176 OF 2016

NICODEMUS EMURON LOWOTON.....1ST PLAINTIFF

NGAMIA CONSULTING CO. LTD.....2ND PLAINTIFF

VERSUS

CHARLES OJORE LOROGI.....1ST DEFENDANT

DAVID MERIMUG.....2ND DEFENDANT

KANU TURKANA COUNTY.....3RD DEFENDANT

TURKANA COUNTY LAND REGISTRAR...4TH DEFENDANT

RULING

1. The application dated 15/12/2016 seeks an order of injunction to restrain the 1st, 2nd and 3rd respondents or their agents from interfering with the proprietary rights of the plaintiffs in that land known as **Plot No. 824 (Crusade Ground)** in Lodwar Town pending the hearing and determination of the suit.

2. The application is supported by the affidavit of the 1st applicant which was sworn on 15/12/2016. The grounds upon which the application is made are:- that the 1st plaintiff is the bona fide purchaser for value of the suit property; that the 1st plaintiff has been using the premises for his business; that the 1st and 2nd defendants are intent on alienating the suit land for their own use; that the 1st and 2nd respondents are using their capacity as officials of the 4th respondent to deprive the 1st plaintiff of his plot.

3. The application is opposed by the 1st and 3rd respondents who filed their response on 17/2/2017 in the form of a replying affidavit sworn by the 2nd respondent on 18/1/2017.

4. The gist of that reply is that the 1st - 3rd applicants never at any materials time bought any plot known as **Plot No. 824 (Crusade Ground)**, Lodwar Town as alleged; that the 1st applicant was only a tenant at **Plot No. 456 Lodwar** which is managed by the 1st and 2nd respondents; that the respondents did not enter into any agreement with the applicants for the sale of land and the 1st and 2nd respondents were not parties to the agreement exhibited as "**NEL1**"; that the letter of allotment whose copy is exhibited by the plaintiff was obtained by fraud; that the evidence of monies received by the defendants from the 1st plaintiff was in respect of some rent arrears; that the plaintiffs have no land at Crusade Grounds, or any plot bordering that of the 1st, 2nd and 3rd defendants; that the dispute between the applicant and the 1st -3rd respondents is still pending before the office of the Land Administration in Turkana; that a break in order was issued by a Magistrate's Court to enable distraint for rent against the 1st defendant, and that the plot number of the premises managed by the 1st and 2nd defendants is Plot No. 456 Lodwar and not No. 824.

5. There is a Survey Report filed in court on 21/8/2017. It is prepared by the Chief Physical Planner, the Land Administrator, and the Surveyor, Turkana County. It casts doubt on the existence of Plot No. 824. This is what the report states at one point:-

“According to our Land Registry once a plot with one given number is sub-divided it automatically generates Plot A and B in this case the original number for the whole plot before it was subdivided was Plot No. 456. This means that after it was subdivided and sold out it must have generated two plot numbers as 456A and 456B, how the plot number 824 for Nicodemus Lowoton came to have a stand alone number 824 instead of 456B raises a lot of questions. The land registry

record also shows no plot transfer was done. This is a mandatory process for any registered plot in our land registry records.

The Part Development Plan for Kanu office plot, (Plot No. 456) presented to this office by Mr. Lorogoi was confirmed to be in our records of Part Development Plans prepared in the year 2011 with the size same as the one indicated on the presented map. The measurements are 52m by 16.5 by 46m by 35m. The plot is located in Turkana County, within Lodwar Township. However the Plot No. 824 being claimed by Mr. Nicodemus Lowoton could not be clarified on the ground in terms of the size and in the office records as presented. No records or an update of the same is found in our survey system. As stated earlier either no plot transfer has been captured in the land registry records”.

6. The report was prepared pursuant to an order of this court made following the consent of the parties. The order required the Turkana County Land Surveyor, the Chief Physical planner, and the Land Administrator, Turkana, to visit the disputed site Plot No. 824 and Plot No. 456 at Lodwar Town and file a Report indicating the physical position of the two plots and the acreage of the plots.

7. However the report filed on 21/7/2017 sounds curious in view of the letter dated 21/9/2016 attached to the applicants’ supporting affidavit in which one of the signatories to the report, the Land Administrator appears to be confirming that Plot No. 824 exists and that according to the land records held by the County Government, it had been allocated to the 1st applicant.

8. I have looked at the letter dated 26/9/2016 annexed as Exhibit “NEL-5” in the applicant’s supporting affidavit of 15/12/2016 and the response dated 10/10/2016 annexed as Exhibit “DM3” in the respondent’s replying affidavit of 18/1/2017. Through the labyrinthine strands of allegations and counter allegations, claims and denials, the court is able to see that there existed a plot which was the subject of some kind of commercial engagement between the two sets of disputants herein.

9. It is too early in these proceedings, and indeed none of the parties have sufficiently persuaded the court that they have a better claim to the land. The documents exhibited in the affidavits of the opposing sides are subject to proof at the hearing of the main suit. This court cannot rule for now as to whether this was merely a rent agreement or if at any point a sale agreement was entered into. The plaint seeks an order of eviction against the defendants from the plot which the plaintiff considers to be his. The defendants are therefore in possession. The defendants admit that the applicants at some point in time were in occupation of the suit premises.

10. I therefore find that there are suit premises common to both parties in the suit. I also find that there were court proceedings in *Eldoret Chief Magistrate’s Misc. Application No. 98 of 2015* which may have led to the exit of the plaintiff from the premises. Though I find that the plaintiffs’ case not to be so clear cut I find it to be so arguable as to be capable of being deemed a prima facie case within the terms of the rule in *Giella -vs- Cassman Brown 1973 EA 358*, I also find that in the circumstances of this case the plaintiff has established that he would suffer irreparable loss or damage were the order sought not issued.

11. An injunction is a discretionary remedy the grant of which depends on the circumstances of each case. There are some unexplained gaps in the respondent’s defence, and the court may in its discretion grant an order of interim injunction in order to preserve the subject matter till the end of the suit.

12. I therefore grant an order prohibiting the alienation or disposal of the suit property until the hearing and the determination of this suit. That order is limited to alienation or disposal of any interest in the suit premises only. The issue of a mandatory injunction at this stage does not arise.

Dated, signed and delivered at Kitale on this 1st day of February, 2018.

MWANGI NJOROGE

JUDGE

1/2/2018

Coram - before Mwangi Njoroge Judge

Court Assistant - Picoty

Mr. Ondabu for 1st, 2nd and 3rd Defendants

N/A for the 4th Defendant

Mr. Omboto for 1st and 2nd Plaintiffs

COURT

Ruling read in open court in the presence of the plaintiffs’ Counsel and the 1st - 3rd Defendants’ Counsel.

MWANGI NJOROGE

JUDGE

