



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 89 OF 2017**

**JOHN MASINDE KANCHENJA.....PLAINTIFF**

**VERSUS**

**JEREMIAH MARABU MIYORO.....1<sup>ST</sup> DEFENDANT**

**COUNTY LAND ADJUDICATION &**

**SETTLEMENT OFFICER-TRANS-NZOIA.....2<sup>ND</sup> DEFENDANT**

**DIRECTOR OF LAND**

**ADJUDICATION & SETTLEMENT.....3<sup>RD</sup> DEFENDANT**

**R U L I N G**

1. The application dated 4/12/2017 seeks a mandatory order of injunction directing the 1<sup>st</sup> defendant to demolish the fence and structures he has erected on the plaintiff's plot known as **Plot No. 182 Kanyarkwat Settlement Scheme** within 7 days of the order and in default the plaintiff be at liberty to bring them down and the cost of demolition be borne by the 1<sup>st</sup> defendant.
2. The application also seeks an order of temporary injunction restraining the 1<sup>st</sup> defendant from encroaching, fencing, cultivating, trespassing onto, wasting, ploughing, growing crops, leasing, occupying, developing or dealing in any manner with the suit land pending the determination of this suit.
3. The grounds upon which the application is brought are that the 1<sup>st</sup> defendant is fencing the suit land in utter violation of the plaintiff's rights and that the 1<sup>st</sup> defendant has threatened to occasion violence upon the applicant. It is alleged that the applicant lives on the suit land. However, according to the applicant, he was not an allottee of the land and has never been issued with any allotment letter.
4. The 1<sup>st</sup> defendant opposed the application by filing his sworn replying affidavit dated 24/1/2018. In that affidavit he asserts that he is the registered proprietor of the land and exhibits a copy of a title deed bearing the date 21/2/2017, a date prior to the filing of this suit. He indicates that he purchased the land from one Hannah Kirui on 13/3/2015 whereupon Hannah Kirui repaid the Settlement Fund Trustees the loan of Kshs.50,000/= she owed. A copy of the receipt for the said payment is exhibited as "JMM3".
5. The parties clearly are interested in the same parcel of land on the ground. The party with the documents that bear greater weight for now in this application is the 1<sup>st</sup> defendant. He avers that the plaintiff has only erected a structure, and the structure is outside the suit land. He also casts doubt on the applicant's right to the land.
6. I find that in view of the evidence presented by the parties, the plaintiff has not established that he has a prima facie case with a probability of success or that he would suffer injury that cannot be compensated for by way of damages if the orders sought are not granted.
7. Consequently, I dismiss the application dated 4/12/2017 with costs to the 1<sup>st</sup> defendant.

**Dated, signed and delivered at Kitale on this 26<sup>th</sup> day of March, 2018.**

**MWANGI NJOROGE**

**JUDGE**

**26/3/2017**

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant – Picoty

N/A for the parties

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**26/3/2018**