



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

PETITION NO. 6 OF 2017

IN THE MATTER OF CONTRAVENTION OF ARTICLE 40 (1) (2) (A) 3(B) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ARTICLES 22 (1), 23 (1) AND 64 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF DEPRIVATION OF LAND MEASURING 1 HA (2.5 ACRES)

BETWEEN

ZEDEKIAH EVANS NYAMONGO ACHIRA.....PETITIONER

VERSUS

NATIONAL LAND COMMISSION1ST DEFENDANT

SETTLEMENT FUND TRUSTEE.....2ND DEFENDANT

BOARD OF MANAGEMENT

SAIWA SECONDARY SCHOOL.....3RD DEFENDANT

SAMMY KURGAT.....4TH DEFENDANT

ATTORNEY GENERAL.....5TH DEFENDANT

RULING

1. The application dated 5/2/2018 seeks an order that a Valuer be allowed to access the disputed piece of land for purposes of assessing the value of the land, the various types of trees and structures built within the land and any other damage as to the bringing down of those trees and structures.

2. The application is supported by the affidavit of the petitioner sworn on 5/2/2018. The said affidavit states that he had to pay for the trees on the land and that he had planted napier grass and more trees on the land. The petitioner avers that the 3rd respondent’s agents invaded the land and harvested the trees without any colour of right and they also caused other damage upon the land. It is alleged that the respondents are now covering up their tracks by burning the remnants of the tree stumps.

3. The application is opposed. The 2nd, 3rd, 4th and 5th respondents filed two replying affidavits of Oluoch A.M. Eric and Sammy Kurgat both dated 8/2/2018. In those affidavits it is averred that the suit land is public land registered in the name of the Settlement Fund Trustees which was allocated to Saiwa Secondary School and on which school infrastructure has been developed. The respondents term the plaintiff a squatter who did not have any legal right or claim to the suit land. They say he has not demonstrated that he bought the said land and therefore the request for a Valuer to enter the land is not justified.

4. I find that sufficient evidence has been adduced that the said Plot No. 288 is registered in the name of the Settlement Fund Trustees and not the petitioner. The prayer in the application dated 5/2/2018 is not merited on this ground alone. I therefore dismiss the application dated 5/2/2018 and order that the main petition be prepared for hearing and be listed for hearing on its merits.

Dated, signed and delivered at Kitale on this 20th day of April, 2018.

MWANGI NJOROGE

JUDGE

20/4/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Barongo for the Applicant

Ms. Munialo for 2nd -5th Respondent

Ms. Munialo for Njuguna for 1st Respondent

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

20/4/2018