



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL CASE NO 7 OF 2018

IRIKAI JOHN KOBIRA.....APPELLANT

VERSUS

MUSA KOBIA MAILUTHA.....RESPONDENT

RULING

1. The brief history of this matter is that respondent herein Musa Kobia filed a case at Tigania court, the same being no. 5/2018 and he also filed an application dated 16.3.2018 before the same court praying for injunctive orders to restrain the present appellant from entering, cultivating, cutting down trees, damaging crops or blocking the plaintiff's access to the land or in any other manner whatsoever interfering with the plaintiffs/applicants peaceful occupation of LR No. 7308 Karama Adjudication Section and also an order directing him to pull down the barbed wire fence he has erected around the plaintiff's land.

2. The orders of injunction were granted *ex parte* on the same day and the matter was given the date of 24.4.2018 for interpartes hearing. The Presiding Magistrate then apparently went on leave.

3. The present applicant, Irikai John Kobira who was the defendant in the lower court case was dissatisfied with this ruling and hence filed an appeal No. 7/2018 before this court. He also filed an application under a certificate of urgency dated 20.3.2018. He is praying that the *ex parte* orders given on 16.3.2018 be varied and the parties be ordered to maintain the status quo which existed as at the time the suit was being filed.

4. The grounds in support of this application are that;

- (i) The applicant/appellant is the registered owner of parcel no. 11849 Karama Adjudication section which same parcel is claimed by the respondent.
- (ii) That parcel no. 7308 is registered in the name of M'Mairuta M'Ampuria and not the respondent herein.
- (iii) That the respondent is using the Temporary orders of injunction to gain entry into the appellants land and have him evicted.
- (iv) That all the pleadings in the primary suit herein indicates that the appellant is the one in occupation.
- (v) That the court which gave *ex parte* orders proceeded for leave till 24/4/2018 when it gave the date for inter parties hearing.

5. Applicant has also sworn a supporting affidavit filed on 23.3.2018.

6. I have weighed all the issues raised herein. Order 40 rule 7 of the CPR provides that ***"Any order for an injunction may be discharged, or varied or set aside by the court on application made there to by any party dissatisfied with that order"***.

7. I note that the suit is at the infancy stage. This court is not the trial court. Further, this court is not seized of the material facts which can enable the court to resolve the ownership dispute at this stage.

8. I also note that the matter is due for inter parties hearing next week. This court would be hesitant to issue orders that may impede the operations of the lower court in determining the issues in dispute.

9. I therefore decline to allow the application and instead direct the parties do ventilate the issues at hand before the trial court.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 18th APRIL, 2018

IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

HON. LUCY. N. MBUGUA

ELC JUDGE