

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 580 OF 2017

KINYAMAL OLE LOLGISOI.....PLAINTIFF

-VERSUS-

ANTHONY CHEPORION CHEPKWOSI.....DEFENDANT

RULING

The Plaintiff's Application is dated 24th November, 2017 and is brought under Order 40 Rule 1 and 2 of the Civil Procedure Rules. The Applicant seeks an interlocutory order of injunction to restrain the Defendant from interfering, entering, cultivating and leasing a parcel of land known as **Narok/Trans Mara/Kapune/243** (hereinafter called the suit land) pending the hearing and determination of the suit.

The Application was supported by the Affidavit of the Plaintiff. He deponed that he is the registered owner of the suit property and he attached a copy of a certificate of title and an official search. He stated that on or about the 28th September, 2017 the Respondent demanded that he does transfer a portion measuring 4 acres to him and when he declined the Respondent resorted to use the Assistant County Commissioner Trans Mara West and he received a copy of summons from the said Assistant County Commissioner on 9th November, 2017 where he was threatened with arrest.

The Applicant avers that the action of the said Assistant County Commissioner will be prejudicial to him.

The Respondent opposed the said application by way of filing a replying affidavit. The respondent alleges that he purchased some 4 acres of land from the plaintiff on 22nd February, 1995 and he annexed a copy of sale agreement. He further contended that he demanded from the applicant to sign a transfer to enable him secure a title for the parcel of land and lastly that the applicant has interfered with the suit property by cutting the fence.

When the application came for hearing on 6th February, 2018 the parties agreed to have the application argued by way of written submissions. The applicant filed his submissions on 16th February, 2018 but the Respondent is yet to file his submissions despite being given the opportunity to do so.

The Applicant's advocate submitted that the applicant is the registered owner of the suit and that the respondent wants to deprive him of the same by using the Assistant County Commissioner Trans Mara West and that the Respondent wants to occupy the suit land forcefully.

I have read the application before me and the pleadings filed. As stated in the case of **Guella -Versus- Cassman Brown and Co (1973)EA 358** an Applicant for interlocutory injunction must prove that he has a prima facie case with probability of success and unless orders are not granted he will suffer irreparable loss and damage.

The Plaintiff case against the Respondent is based on threats made by the Respondent. The Respondents on the other hand contends that he had purchased the suit land in which the plaintiff denied. These are matters than can only be resolved on the hearing of the substantive suit if their oral testimony will be required.

In view of the above I find that the applicant has not demonstrated that the respondent has actuated the threats by using the Assistant County Commissioner. I find that the Applicant has established a prima facie case with a probability of success and damages may not be enough to compensate him.

The upshot of the foregoing is that I will allow the application dated 24th November, 2017 in terms of prayer 4 with costs.

DATED, SIGNED and DELIVERED in open court at NAROK on this 18th day of APRIL, 2018

Mohammed Noor Kullow

Judge

18/4/2018

In the presence of: