



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 145 OF 2016**

**ISMAEL AMBEYI.....1<sup>ST</sup> PLAINTIFF/RESPONDENT**

**PATRICK WEKESA.....2<sup>ND</sup> PLAINTIFF/RESPONDENT**

**VERSUS**

**DAVIS WAFULA NAKITALE.....DEFENDANT/APPLICANT**

**RULING**

1. The application dated 12/2/2017 seeks an order of temporary injunction to restrain the plaintiff/respondent from wasting or continuing to waste the land subject matter of this suit. It is alleged that the plaintiffs and their agents began excavating murram from the suit land on 10/2/2018. The application is supported by the sworn affidavit of the defendant.

2. The application is opposed. The 1<sup>st</sup> plaintiff filed a replying affidavit which he swore on 19/2/2018. The grounds upon which he opposes the application are that he bought 4 acres out of the said land and took possession thereof. He exhibits an agreement. He states that upon execution of that agreement the defendant allowed him to take immediate possession of the land. The defendant was supposed to hand over his particulars to facilitate transfer of the land to the 1<sup>st</sup> plaintiff but he has never done so despite the plaintiff paying the entire consideration under the agreement.

3. I have looked at the plaint. Whereas the 1<sup>st</sup> plaintiff alleges he bought a portion of the land from the defendant, the 2<sup>nd</sup> plaintiff alleges he bought his portion from one Jonathan Mtende. The plaintiffs have not exhibited any title to land in their name as the transfers have not been registered. At present all they seem to be having are interests created by the agreements mentioned in their pleadings.

4. However, I have examined the annexures to the 1<sup>st</sup> plaintiff's reply and read the exhibited affidavit of the defendant which acknowledges that he sold some land to the 1<sup>st</sup> plaintiff and that only a balance of Kshs.200,000/- remained outstanding in that sale. The defendant has not also exhibited any documents showing he owns the land. There is a "draft defence" filed by the defendant that also does not assert any ownership of the land. Other parties are mentioned by the plaintiffs as having sold their interest in the land to the 2<sup>nd</sup> plaintiff and to the defendant.

5. I find that there is not enough basis laid before this court by the applicant to warrant the granting of the orders sought in the application dated 12/3/2018. This is a matter in which the parties should seek a hearing date on priority basis and have all issues surrounding the suit land should upon hearing be determined on the merit. The plaintiffs aver they have been on the land for 10 years. This is not controverted by the defendant. There is also no evidence that the damage caused would not be capable of

being compensated for by way of damages.

6. I therefore find that the application dated 12/3/2018 has no merit and I dismiss it with costs to the plaintiffs.

It is so ordered.

Dated, signed and delivered at Kitale on this **11<sup>th</sup>** day of **April, 2018.**

**MWANGI NJOROGE**

**JUDGE**

**11/4/2018**

Coram:

Before - Mwangi Njoroge - Judge

Court Assistant - Picoty

N/A for parties

**COURT**

Ruling delivered in open court in the absence of the parties who had notice of the ruling date.

**MWANGI NJOROGE**

**JUDGE**

**11/4/2018**