



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KITALE

ELC CASE NO. 29 OF 2018

BARASA MAKHANU.....PLAINTIFF

VERSUS

TERIG KIGEN.....1ST DEFENDANT

JAIRUS JUMA WAFULA.....2ND DEFENDANT

RULING

1. The applicant brought an application dated **15/3/2018** seeking the following principal order:

“That pending the hearing and determination of this suit the respondents their agents and servants be restrained by a temporary injunction from claiming entering using or in any other manner occupying land known as Maridadi Settlement Scheme Plot No 187”.

2. The application is supported by grounds on its face and in the affidavit of the plaintiff sworn on the 1st March 2018.

3. The grounds upon which the application is brought are that the applicant has been in occupation of the suit land for 35 years and the respondent has tried to evict the applicant using court orders but in vain, with the ultimate action of the respondent being that now he has obtained registration of the land in his name.

4. In the replying affidavit sworn by the 1st defendant on the 8th April 2018 and filed on the 11th April 2018, the deponent avers that he is the lawful allottee of the land. Having been allotted the same by the Settlement Fund Trustees and that he has complied with all the conditions upon allotment which led to the registration of the suit land in his name and his subsequent sale of the land to the 2nd defendant. He avers that the letter of allotment borne by the plaintiff is not genuine and that the plaintiff is not the owner of the land. He avers that previous litigation regarding the land has not ended in favour of the plaintiff and that he has been repaying the Settlement Fund Trustees loan obtained by him and secured by the land in their favour.

5. In an application of this nature I find that the possession of the land by a defendant requires that the court take precaution so as not to issue a mandatory injunction at an interlocutory stage without any sound basis. However in this case the plaintiff is in possession and he is the one seeking an order of injunction while the 1st defendant already is registered as the proprietor and is alleging fraud in the allotment letter held by the plaintiff.

6. I find that the long duration of the plaintiff's occupation of the suit land is not sufficiently controverted by the defendant. Despite the fact that the defendant holds a title to the suit property, I find it necessary in this suit for the purpose of preserving the suit land to grant the plaintiff's application as the matters in issue, including the alleged fraud are tried and determined by this court.

I therefore grant the application dated **15th March, 2018** in this suit and order that each party shall bear its own costs. The suit should also be set down for hearing on an urgent basis.

Dated, signed and delivered at Kitale on this **31st day of May, 2018.**

MWANGI NJOROGE

JUDGE

31/5/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Lowasikou holding brief for Nyamu for the defendants

N/A for the plaintiff

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

31/5/2018