



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC CASE NO. 11 OF 2018

ANDREW SINJA.....PLAINTIFF

VERSUS

JAMES M. SINJA.....DEFENDANT

R U L I N G

1. The plaintiff brought an application dated 6/2/2018 seeking the following principal order:

“An order of temporary injunction restraining the defendant or his agents from encroaching trespassing on, and /or carrying out any operations or activities of any nature or in any manner interfering with the plaintiff’s interest over the suit land Title Number Cherangany /Kapcherop /2799 pending the hearing and determination of this suit”

2. The grounds on which the application is based are on the face of the application and in the sworn supporting affidavit of the plaintiff dated 6th February 2018 which is attached to the motion.

3. Briefly, however, they are as follows: the plaintiff owns the suit land part of Land Parcel Number **Cherangany /Kapcherop/2799**; that the defendant wrongfully and forcefully and without any justification invaded the suit property and trespassed onto a portion measuring **0.13 acres**, ploughed the same and has threatened to construct a house thereon and remain in such wrongful possession.

4. The defendant’s response is contained in a replying affidavit dated 12th February, 2018 and filed on the same date. He avers that the land emanated from a subdivision of the land belonging to his deceased father **Naibei Sinja** after irregular procurement of Letters of Administration without the involvement of all beneficiaries to the estate of the deceased’s estate. There was no subdivision on the ground and the defendant has been utilizing the disputed portion and he has not been aware of the subdivision of the land it is located in. He also avers that there is a summons for the revocation of the grant and that the instant application is prompted by the plaintiff’s knowledge that the defendant has commenced a challenge to the grant that gave the plaintiff land.

5. The plaintiff denied these averments of the defendant through an affidavit dated 19th March, 2018.

6. Though I find that the plaintiff is in possession of a title deed to the land, the defendant has also demonstrated that the grant that gave rise to the title document is under assault by exhibiting the summons for revocation of the grant in the succession proceedings in **Kitale High Court Succession Cause No 26 of 2013**. The determination has yet to be made in that summons for revocation of Grant. It is noted that the defendant is in occupation of the portion and that orders that the defendant vacate the same might amount to mandatory injunction which is discouraged in practice at the interlocutory stage.

7. I therefore find that the application by the plaintiff cannot be granted. The same is declined and each party shall bear their own costs.

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

Mr. Lowasikou for respondent

N/A for Applicant.

COURT

Ruling read in open court.

MWANGI NJORGE

JUDGE

31/5/2018