



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KITALE

ELC CASE NO. 4 OF 2018

ISAIAH WANYONYI AND 29 OTHERS.....PLAINTIFFS

VERSUS

COUNTY GOVERNMENT OF TRANS NZOIA.....DEFENDANT

RULING

1. The plaintiffs brought an application dated **19/1/2018** seeking the following principal order:

“An order of temporary injunction restraining the defendant or its agents severally from encroaching trespassing entering or interfering in any manner whatsoever with the plaintiffs’ quiet possession or occupation and use of parcels of land known as Kitale Municipality Block 7 by demolishing or pulling down the fences or any other improvements or structures thereon or in any other manner howsoever dealing with the said parcels of land pending the hearing and determination of this suit”.

2. The grounds upon which the application is based are on the face of the application and in the sworn supporting affidavit sworn by the 1st plaintiff on 17th January 2018 which is attached to the motion. Briefly, they are: That the plaintiffs’ plots of land which are part of Land Parcel Number **Kitale Municipality/Block 6** and **Kitale Municipality /Block 7**; that the defendant wrongfully entered the suit properties and demolished the plaintiffs’ structures thereon and fences with an intent to wrongfully enter and take possession of the land, that the land might be degraded and wasted if that entry takes place, and that the defendant has no interest or claim on the suit land to warrant its such entry and occupation on the suit land.

3. The plaintiffs have exhibited copies of letters of allotment of the land to them issued by the Government of the Republic of Kenya on diverse some dates ranging from 1992 to 1998. Photographs of demolished structures and uprooted fencing posts are also exhibited. No maps or plans are exhibited.

4. The defendant has responded to the application vide the sworn affidavit of one Pius Munialo, its County Secretary. He avers that he is not aware of any resolution by the County Government to the effect that the plaintiffs be evicted from the suit land. He also avers that he is aware that the land comprised in “Block 7” is Trust Land which the government intended to allocate on leasehold basis to various persons and that letters of allotment were issued. He states that the applicants were also offered plots by the Settlement Fund Trustees and that none of the plaintiffs have ever formally accepted the offer in the prescribed manner and that therefore the offer has now lapsed and no interest has passed to the plaintiffs who should now be deemed trespassers. In addition they have also not demonstrated any tangible interest in the land.

5. The plaintiffs filed their written submissions on the application on the 15th March 2018 and the defendants on the 20th March 2018. I have considered those submissions. The issues that arise are whether the plaintiffs have established that they have a prima facie case with probability of success and if they would suffer irreparable loss that would not be capable of being compensated by way of damages if the orders sought do not issue.

6. I have considered that the linking of the defendant to the demolitions is only supported by the conclusory statements of the 1st plaintiff. The defendant avers that no such resolution has been agreed on to evict the plaintiffs and I believe that, coming from the County Secretary, this may be the correct position.

7. However I find that the same County Secretary has admitted, without giving very clear details, that there was a government(without stating whether National or County) plan to settle persons on the suit land. This court cannot tell at the moment whether those intended allottees he speaks of in his response were the plaintiffs.

8. The question of who authorized the eviction of the plaintiff and demolition of their structures cannot therefore be clearly answered here and at this stage. Besides, there is no evidence that the suit land in the allotment letters is the same as the suit land on the ground which the

plaintiffs are intent on taking possession of before the demolition. In short the plaintiffs' application is hit by a dearth of details which makes it impossible to determine positively that they have established a prima facie case.

9. I find that the plaintiffs have not established a prima facie case as against the defendant. By the same evidence it cannot also be said that the plaintiffs would suffer irreparable loss if the orders sought are not granted.

10. However on a balance of convenience it is safe to maintain the status quo of the land without any development thereon by both parties till the hearing and determination of this suit.

11. I therefore order that neither party shall carry out any activity or any development or any acts of waste on the suit land pending the hearing and determination of this suit.

Each party shall bear its own costs.

It is so ordered.

Dated, signed and delivered at Kitale on this **29th** day of **May, 2018**.

MWANGI NJOROGE

JUDGE

29/5/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Ingosi for plaintiff/applicants

Ms. Khaoya for the defendants

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

29/5/2018