



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 548 OF 2017

**KENNEDY OLOWASIN SAPAI (Suing on behalf of the estate
of the late Okware Omwenga).....PLAINTIFF/RESPONDENT**

-VERSUS-

DAVID ONDIEKI MOSORI.....DEFENDANT/APPLICANT

RULING

The Application before me is the Defendants Notice of Motion dated 29th September, 2017 seeking inter alia a temporary injunction restraining the Plaintiff either by himself, servants or agents from plucking tea leaves, entering, re-entering, trespassing into laying claim or interfering with Land Parcel No. **TRANS MARA/MOGUARA/132** pending the Hearing and Determination of the suit.

The Applicant further seeks an order of mandatory injunction compelling the Plaintiff/Respondent to desist from plucking tea leaves, cultivating or utilizing the 25 meter road that passes through **LAND PARCEL NO. TRANS MARA/MEGUARA/132** pending the hearing and determination of the suit and the orders if granted be implemented by the OCPD and OCS Kilgoris Police Station together with costs of the application.

The Application is based on the grounds that the Applicant is the registered proprietor of the suit land and that the Plaintiff/Respondent is the proprietor of a parcel of land known as **TRANS MARA MEGUARA/145** that borders that of the Applicant but separated by a 25 meter road. It is the Applicant's contention that the Respondent has maliciously demolished a perimeter fence on the boundaries of the two parcels of land and subsequently interfered with the Applicants rights, interest and usage of his parcel of land. The Applicant further avers that as a result of the above the Respondent has trespassed on his land and continues to pluck tea leaves and the said actions constitute the deprivation of his rights and benefits from the said land.

The Application was supported by the Affidavit of the Applicant that basically expounded on the grounds that the Application was based upon what I have stated hereinabove.

The Application was opposed by the Plaintiff/Respondent who filed a Replying Affidavit. The Respondent concede that the Defendant is the owner of **LAND PARCEL NO. TRANS MARA/MEGUARA/132** but avers that there exists an order of the court restraining the Application that was issued in Narok Elc No. 288 of 2017 and hence the present application is a waste of court's time.

When the application came before me for hearing the parties agreed that the Application be canvassed by way of written submissions and both parties filed their respective submissions.

From the pleadings filed and the submissions made it is evident that both the Applicant and the Respondent are the owners of **LAND REFERENCE NO. TRANS MARA/MEGUARA/132 AND TRANS MARA/MEGUARA/145** respectively.

Having read the Application before me and the submissions filed and the issue for determination before me is whether the applicant has established a prima facie case with a probability of success and whether the applicant warrants the grants of a mandatory order of injunction.

I have considered the Application and the Affidavit and the annexures thereto. The Applicant is the registered owner of **LAND REFERENCE NO. TRANS MARA/MEGUARA/132**. He has produced a sale agreement indicating that he purchased the suit land for value and a certificate of official search dated 26th September, 2017 indicating that the subject land is registered in his name and from that the plaintiff has shown that he has a prima facie case with probability of success.

For the grant of mandatory injunction to be issued at the interlocutory stage the plaintiff must demonstrate that his case is clear and there exists special circumstance warranting the grant of the same.

From the record the applicant has demonstrated there exists special circumstance that warrants the grant of mandatory injunction. He is apprehensive that the Respondent may deprive him of the use of the property which he is the registered owner and he may not reap the full benefit of the usage of the land and he thus wants the protection of the court from further usage by the Respondent.

In view of the above reasons I will allow the Defendant's/Applicant's application dated 29th September, 2017 with costs.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **11TH** day of **MAY, 2018**

Mohammed Noor Kullow

Judge

11/5/18

In the presence of:

CA:Chuma

N/A by the parties

Mohammed Noor Kullow

Judge

11/5/18