



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 570 OF 2017

ROSE MARY CHEMALEL.....PLAINTIFF/APPLICANTS

-VERSUS-

SAMWEL KINUTHIA BEN NJUKI & 4 OTHERS...DEFENDANTS/RESPONDENTS

RULING

The Application before me is the Notice of Motion dated 24th October, 2017 and brought under Order 40 Rule 2 (1) of order 51 of the Civil Procedure Act seeking orders of Injunction restraining the Defendants by themselves, and/or agents from trespassing and alienating and/or selling the Applicants parcel of land known as **NAROK/CIS MARA/NKUBEN/16**. The Applicant also sought further mandatory orders of Injunction stopping the Respondents from trespassing and carrying out farming activities on the suit land.

The Application was based on the grounds that the Applicant is the registered owner of the suit property and the boundary between her and the Respondents is clearly defined but she alleges that sometimes in 1980 an earth road was created by the local community passing through her land alongside that of her neighbours and that the same was incomplete disregard of where the actual road ought to have been as indicated on the area Map Edition June 1980 sheet 146/1,146/2 and 132/3 Nkoben Adjudication Section and thus the Respondents have continued to pass through her land and claiming that the artificial earth road is the boundary and the trespass is interfering with her entire enjoyment of the suit property.

To the application the Applicant has a supporting affidavit deponing on the grounds upon which the application is based and annexed to the said affidavit a certificate of official search and a copy of the area map and its based on the above that she prays the court to grant her the orders sought.

The application was only opposed by the 6th Respondent who filed a replying affidavit. The 1st, 2nd, 3rd, 4th and 5th Respondents did not file any response to the application and the substantive suit.

The 6th Respondent opposing to the Application was contained in his replying affidavit which was filed in court on 11th December, 2017. He deponed that he was the registered and absolute proprietor of the parcel of land Narok/Cis Mara/Nkoben 57. He denied to have trespassed on the plaintiff's land and contends that he does not share any boundary with the plaintiff's parcel of land and that he took possession of his parcel upon the surveyor placing beacons on each parcel.

The Applicant upon grant of leve of the court filed a further affidavit disputing the contents of the 6th Respondents affidavit. She maintained that the 6th respondent actually occupies the parcel of land that borders her parcel.

When the application came for hearing before court counsel agreed that the same shall be disposed of by way of written submissions. The applicant filed her submission on 27th April, 2018 where the 6th Respondent at the time of writing this ruling did not file any.

I have read the application before me and the submissions filed. The issues for determination before me at this stage is whether the Applicant has established a prima facie case with a probability of success, whether damages will not be adequate enough to compensate the applicant and whether the applicants case is so clear and their exist special circumstance to warrant the grant of mandatory orders of injunction.

The Applicant has annexed to her application a copy of a search certificate that indeed shows that she is the registered and absolute owner of the suit land and being so and since a road passes through her land she is apprehensive that unless restrained the Respondent will deny her the enjoyment of his land. The 6th Respondent does not deny the existence of the said road but maintain that he does not share a boundary with the Applicant. For the above, I find that the Applicant has demonstrated that she has a prima facie case with a probability of success.

On the second issue of whether damages will not be adequate I find that adequate compensation may not be enough.

On the grant of mandatory order of injunction I find that the applicant has established a clear case for the grant of orders as she has

undisputed title to the property.

The upshot of the above is that I will allow the application dated 24th October, 2017 with costs to the applicant.

DATED, SIGNED and DELIVERED in open court at NAROK on this 4TH day of MAY, 2018

MOHAMED NOOR KULLOW

JUDGE

4/5/18

In the presence of:

Ms Cheptoo holding brief for Maritim for the Defendant

Mr Kariuki for the plaintiff/applicant

CA:Chuma

MOHAMED NOOR KULLOW

JUDGE

4/5/18