



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC CAUSE NO. 12 OF 2018**

**DENNIS KOIKAI NAISHO ..... PLAINTIFF**

**-VERSUS-**

**ERIC TIPIS ..... 1<sup>ST</sup> DEFENDANT**

**SARAH TIPIS ..... 2<sup>ND</sup> DEFENDANT**

**MICHAEL TIPIS ..... 3<sup>RD</sup> DEFENDANT**

**BENARD TIPIS ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

The Plaintiff/Applicant has by a Notice of Motion dated 26<sup>th</sup> January, 2018 sought for injunction restraining the Defendants and any other 3<sup>rd</sup> parties acting on their behalf from encroaching into, interfering with and/or in any other way dealing with the suit property that is LR.NO. NAROK/TOWNSHIP/360.

The Application was not based on any grounds but the same was supported by the Affidavit of Dennis Koi Naisho. The Applicant in his Affidavit averred that sometimes in 2004 he was approached by one Rodha Tipis the mother of the Respondents with a view to selling him the suit property and after accepting to purchase the same they executed an agreement but the said Rhoda Tipis died before the finalization of the transfer of the property. It is the Applicants contention that the Defendants herein who were appointed as administrators of the estate of the deceased refused to transfer the suit land which had forced him to register a caveat over the land and further despite the aforesaid caveat the Defendants have continued to sub-divide the subject land.

The Applicant in support of his application has annexed a certificate of lease for the suit property, sale agreement between him and the deceased together with various minutes of meetings held between him and the Respondent.

The Defendants have opposed the Application and filed a replying affidavit sworn by Eric Tipis wherein he alleges that the Applicant has not annexed the various sale agreements that he entered into with their deceased mother save for the agreement dated 30<sup>th</sup> March, 2004. The Respondent further contends that and takes issues with Affidavits that were sworn by Thomas Ole Warari and Jonah Ole Keton and allege that they are working in concert with the Applicants to defraud them of their land and avers that they have never offered or counter offered to the Applicant about 4 acres of land to settle the matter herein.

The Respondents also contend that their late mother had informed them that she had refunded the Applicant's money and that if he has not been paid he ought to register his claim as a creditor in the succession cause.

The Respondents had also filed a Preliminary Objection to the entire suit praying that the suit be struck out and dismissed as it offended the provisions of Section 4 (1)(a) of the Limitations of Actions Act.

The Respondents contend that the suit was filed after expiry of 6 years and therefore the cause of action has been extinguished.

When the suit came up for hearing the parties elected not to file submissions to the Application save for Mr. Njagi who filed submissions on the Preliminary Objection.

I have read the Application thereon and the Preliminary Objection filed by the Respondents.

On the Application the issues for determination before me at this interlocutory stage is already settled in the case of **Guella –Versus- Cassman Brown**. Whether the Applicant has established a prima facie case with a probability of success and whether damage will not be

adequate compensation.

From the pleading before me the Applicant has attached a sale agreement and a caution in respect of the suit. The sale agreement was executed by him and the deceaseds' mother in respect of the suit. I don't see why the deceased would have executed a sale agreement if she did not want to sale the land. No evidence has been placed before me to otherwise doubt that indeed a sale took place and on this point I find that the Applicant has established a prima facie case against the Defendants.

I also need to point out the Respondents' Replying Affidavit raised various that will be crystalized only if a full hearing is conducted and this is one reason that should preserve the subject land.

From the foregoing therefore I will allow the application dated 26<sup>th</sup> January, 2018 costs in the cause.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 27<sup>th</sup> day of July, 2018**

**Mohammed Noor Kullow**

**Judge**

**27/7/18**

In the presence of:

N/A parties and advocates

CA:Chuma

**Mohammed Noor Kullow**

**Judge**

**27/7/18**