



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC CASE NO. 45 OF 2018

MERTON KISIANG'ANI MUHINDI.....PLAINTIFF

VERSUS

DINAH NANYAMA.....DEFENDANT

R U L I N G

1. The applicant brought an application dated 24/4/2018 seeking the following orders:-

(1)(spent.)

(2) That pending the hearing and determination of this application inter partes this Honourable Court be pleased to issue temporary order of injunction restraining the defendant whether by herself, her servants and/or agents from other persons acting on her behalf or claiming interest through the defendant from entering, trespassing, planting, wasting, damaging, alienating, charging and/or whatever other way interfering with the plaintiff's quiet possession of Title No. Trans-Nzoia/Kipsoen/995 measuring 2 acres.

(3) That at the inter partes hearing of this application orders granted in terms of prayer 2 above be confirmed to operate till the hearing and determination of this suit.

(4) That an order be issued directing the Officer Commanding Kitale Police Station to ensure compliance of the orders issued by this Honourable Court.

(5) That costs of this application be borne by the defendant/respondent.

2. The application is based on the grounds set out at the foot of the notice of motion as follows:-

(a) The plaintiff/applicant is the legal owner of Land Parcel measuring 2 acres Title No. Trans-Nzoia/Kipsoen/995.

(b) The plaintiff/applicant vide P & A No. 79 of 2000 was awarded 2 acres from the Estate of his late father Yohana Muindi Musebe (deceased).

(c) That the husband to the defendant/respondent Fanuel M. Muhindi (deceased) together with five other beneficiaries were awarded 11 acres out of the estate.

(d) That the plaintiff/applicant took possession of the suit land in 2003, however the defendant/respondent could not accord him quiet possession.

(e) That the defendant/respondent trespassed the suit land and developed the same thus prejudicing the applicant's use of his land.

(f) That the applicant has on several occasions tried to enjoy quiet possession of the suit land but the defendant/respondent has constantly bene violent towards the applicant.

(g) That the applicant will likely to suffer substantial loss unless the orders sought herein are granted.

(h) That it will be in the wider interest of justice that the application herein be allowed as the end of justice favour grant of the orders sought.

3. The respondent filed a replying affidavit on **8th May, 2018** and opposed the application dated 24/4/2018 claiming that it is full of falsehood and misdirection; that the applicant has not been candid in his application and as such has not disclosed material facts to this suit; that the facts contained in **paragraph 3** of the plaint are false; that the applicant has never taken possession of any land since 2003; that the applicant has failed to disclose the date on which the trespass began, that the respondent has been in open use of the suit land for 30 years, that her use has been limited to the 11 acres awarded to her late husband whose remains were buried on that very portion, that there was no complaint raised during her husband's lifetime, that the structure that is complained of was built in the year 1988, that there were two succession case proceedings in respect of the state of Yohana Muhindi.

4. I have perused the submissions of the parties with regard to the instant application. There is undisputed allegation that the defendant is in occupation of the land by virtue of an inheritance claim. It is not a suit between strangers. The parties have lived together for a while. The facts of this case require that the status quo be maintained and the hearing of this suit be expedited. Accordingly I order that the application dated **24th April 2018** has no merit and the same is dismissed with no orders as to costs. The parties shall comply with the rules and set the matter down for hearing expeditiously.

Dated, signed and delivered at Kitale on this **18th day of July, 2018**.

MWANGI NJOROGE

JUDGE

18/7/2017

Coram:

Before - Mwangi Njoroge Judge

Court Assistant - Collins

N/A for the parties

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

18/7/2018