



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC APPEAL NO. 16 OF 2017

ROBERT MUYANI MUNJA.....PLAINTIFF

-VERSUS-

EDWIN SORONGA OLOLCHIKE.....RESPONDENT

RULING

By a Notice of Motion dated 5th December, 2017 which was brought under section 1A,1B,3,3A and order 10 rule 4, orders 22,40 Rule 1,2,3 the Applicant sought for orders of inhibition prohibiting any dealings involving land parcel No. Cis Mara/Oleleshwa/18141, an order of injunction of restraining the Respondent from alienating or evicting the Appellant/Applicant from the suit land and further for a stay of further proceedings in Narok CMCC No. 187 of 2016.

The Application was based on the grounds that the Appellant herein was not accorded a fair hearing as the suit proceeded *ex parte* in his absence that there were material concealment of facts by the Respondent and that the trial court acted *ultra vires* its jurisdiction in entertaining hearing and determining the matter *ex parte* and that the Defendant will suffer irreparable loss and damage.

The Application was supported by the affidavit of the Applicant in which he contends that the trial court in an *ex parte* judgement issued on 29th January, 2016 decreed that he effects the transfer of his land parcel No. Cis Mara/Oleleshwa/18141 to the Respondent. He contends that being a land matter the court did not have jurisdiction to hear and determine the matter as it involved land that is exclusive to the Environment and Land Court. He further avers that he was never served with the pleadings in the trial court to enable him come defend the suit and the Respondent/Applicant in view of the judgement of the law stated that the Respondent has attempted to evict him from the suit land in execution of the decree of the court and that the suit land has already been transferred into the name of the Respondent and he thus seeks the intervention of the court.

The Application was opposed by the Respondent by way of a replying Affidavit filed by the Respondent and he contends that the Application is frivolous, vexatious and an abuse of the court process. He says the applicant was served severally with court documents but he ignored the same. He also states that the orders the applicant wishes to stay have already been executed and the entire application overtaken by events. The Respondent further contends that there was an inordinate and unexcusable delay on the part of the Applicant to present the application and appeal.

Lastly the Respondent contends that the suit before the trial court sought for specific performance that arose from a breach of contract pursuant to a Sale Agreement and hence the court had jurisdiction to hear and determine the suit.

I have read the Application herein and the respondent's opposition to the same and heard the submissions made by counsel and the issue for determination before me at this stage is whether the Applicant has demonstrated sufficient grounds for the stay of execution of the decree of the subordinate court and whether the Applicant has established a *prima facie* case for the grant of orders of injunction.

I must point out that as regards whether the subordinate court had jurisdiction or is the substratum of the appeal which I will not deal with at this interlocutory stage.

The Applicant in his application affirms that the suit land had already been transferred into the names of the respondent. This arose after the subordinate court conclusively tried the matter and a decree issued. In view of this I find that the application has been overtaken by events and thus there exists nothing for the court to stay.

On whether the Applicant has established a *prima facie* case I hold that the Applicant has an arguable appeal with a probability of success.

The Applicant has demonstrated that the suit land was registered in his name prior to the judgement of the subordinate court and in the circumstance I will allow the application in terms of prayer 3 and I thus issue an order of injunction against the Respondent from alienating, and/or evicting the applicant from the parcel of land known as Cis Mara/Oleleshwa/18141 pending the hearing and determination of the appeal.

Costs of the application shall be in the cause.

DATED, SIGNED and DELIVERED in open court at NAROK on this 17th day of July, 2018

MOHAMMED NOOR KULLOW

JUDGE

17/7/18

In the presence of:

N /A for parties and advocates

CA:Chuma

MOHAMMED NOOR KULLOW

JUDGE

17/7/18