



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 277 OF 2017

FORMERLY KISII ELC NO. 273 OF 2012

OLOISIRIRI KARDALE & 31 OTHERS.....PLAINTIFFS

-VERSUS-

THE DISTRICT LAND ADJUDICATION &

SETTLEMENT OFFICERS AND 2 OTHERS.....DEFENDANTS

RULING

(Application dated 12th March, 2018)

The Applicant came before the court by way of Notice of Motion dated 12th March, 2018 seeking an order for the maintenance of status quo on the suit property known as Nkararo Adjudication Section and more particularly on plots No. 488, 490, 498, 291, 279, 1006, 857, 765, 554, 471, 470, 482, 927, 933, 861, 910, 729, 955, 656, 657, 480, 289, 500, 1012, 491, 494, 495, 204, 492, 280, 290, 294, 139, 532, 881, 882, 836, 583, 826, 474, 880, 816, 528, 881, 608, 904, 936, 544 and 932 herein after called the plots and further an order of injunction restraining the Defendants by themselves from cultivating, selling, entering, leasing, transferring, alienating, disposing, surveying or in any way interfering with the plots hereinabove mentioned which are within the Nkararo Adjudication section.

The Application was based on the grounds that there is a dispute that is pending before court on the ownership of the suit plots and that the defendant has embarked on the process of sub dividing and subsequently selling the aforesaid parcels of land and that unless the orders sought are granted the Applicants will suffer loss and damage.

The Application was supported by the affidavit of one Oloisiriki Kardalei who averred that he has the authority of the 31 other applicants to file the Application. He states that the Defendants have embarked on the process of surveying the suit land and that plot No. 544 which was in the name of Julius Letuati Kiu has been sold to one Peter Semeyioi.

The Application was opposed by the respondents who filed grounds of opposition and contend that the Applicants have not satisfied the minimum conditions for the grant of temporary injunction.

I have read the application before me and the opposition thereof and the rival submissions that were filed thereof and the issue for determination at this stage is whether the Applicant has made out a prima facie case with a probability of success. The Applicant in the application contends that the respondents are in the process of sub dividing and selling the suit land. However, no evidence of that nature has been placed before the court to appreciate the apprehension of the applicant. The applicant states to have received information on the same but fails to even disclose the source of that information. He further states that plot No. 544 was sold but fails to establish when it was sold and by whom. There was no evidence of the sale and/or the eviction that he alleges to have taken place.

From the above I find that the Applicant has failed to establish a prima facie case with a probability of success and hence on that ground alone the application fails. I will not address the other grounds for grant of an injunction as that will be an academe exercise.

The upshot of the above is that the plaintiff's application dated 12th March, 2018 is dismissed. Costs in the cause.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **11th** day of **July, 2018**.

Mohammed Noor Kullow

Judge

11/7/18

In the presence of:

Both parties

N/A by the advocates

CA:Chuma

Mohammed Noor Kullow

Judge

11/7/18