



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**ELC CASE NO. 40 OF 2018**

**REUBEN MILIMO AKOLO.....PLAINTIFF/APPLICANT**

**VERSUS**

**JOSEPH OJUNA MESHACK.....DEFENDANT/RESPONDENT**

**R U L I N G**

1. The applicant brought an application dated **16/4/2018** seeking the following orders:-

(a) .....(spent.)

(b) That an ex parte injunction order be issued against the defendant /respondent pending the inter partes hearing of this application and the defendant /respondent be restrained whether by himself, his next of kin, servants, agents, associates, any other person(s) acting and or claiming through the defendant from interfering with the plaintiff's plot of land through demolition correction of boundaries construction of structures of any kind and/or any other activity on Kiminini /Kinyoro Block 10 /Kareu/12.

(c) That at the inter partes hearing of this application orders granted in the terms prayed in prayer (b) above do operate till the substantive suit is heard and determined.

(d) That that OCS Endebess Police Station to ensure the orders issued.

(e) That the respondent be prohibited from using the Deputy County Commissioner Endebess Sub-County, Assistant County Commissioner, Endebess Sub-County and the Assistant Chief Endebess Sub-County from harassing, intimidating and threatening to arrest the plaintiff/applicant.

(f) That there be made such other and/or further orders(s) as the ends of justice may demand

(g) The costs be provided for.

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

(a) That the plaintiff properly and lawfully bought his parcel of land from the defendant as a bona fide purchaser and paid the agreed amount of consideration of Kshs.165,000/= paid in full in respect of 1 ½ points of an acre measuring 10.12 x 60 on 3/1/2014 and Kshs.4,350/= in cash paid in 2014 and leaving an agreed balance of Kshs.50,650/= to be paid in installments under no condition after possession.

(b) That the respondent/defendant changed his mind on the amount of balance to be paid to him by the application and on 29/1/2018 the respondent using the Deputy County Commissioner Kwanza/Endebess Sub-county, forced the applicant/plaintiff to sign for a new balance of Kshs.95,650/= unknown to him before and making the applicant to accept and sign the second agreement conditionally to pay the said balance as ordered even if he could not be able to do so on or before 15/3/2018 without failure which he did just to save himself from the embarrassment of losing his deposit of Kshs.4,350/= and 200 trees planted in the ½ point portion of an acre plot which matter was then reported to the advocate Simiyu Wafula & Company Advocates Kitale, who in turn wrote to the Deputy County Commissioner informing the office that the agreement done on 29/1/2018 had no legal basis and was therefore illegal as the parties were bound by the original agreement as the 2<sup>nd</sup> agreement cannot annul the terms of the 1<sup>st</sup> agreement in law.

(c) That the plaintiff's peaceful possession and occupation of his bona fide plot in Kiminini/Kinyoro Block 10/Kareu/12 is being threatened unlawfully by the defendant who wants to demolish and uproot the plaintiff's trees from the plot to sale the same out to another purchaser in breach of the original agreement entered by the parties on 3/1/2014.

(d) The applicant/plaintiff has taken reasonable steps and cautioned the land title No. Kiminini/Kinyoro Block 10/Kareu/12 to bar any transaction to be carried out in the above stated parcel of land without the consent of the applicant/plaintiff.

(e) the applicant shall suffer irreparable injury should an injunction be refused since it is his only source of income and place of abode.

3. The applicant has brought the application under *Sections 3, 3(a) Order 40 Rules 1, 2, 3 and 4* of the *Civil Procedure Rules*. The application is supported by the sworn affidavit of the plaintiff dated **16<sup>th</sup> April 2018**. To that affidavit are annexed copies of the agreements alluded to in the grounds above. The deponent also states that he took possession of the suit land in the year **2014** and developed the same. Photographs of live trees and a house built on what is said to be the suit land are also exhibited.

4. In his replying affidavit dated **14<sup>th</sup> May 2018** the defendant avers that he sold the plaintiff one and a half points of an acre for **Kshs. 165,000/=** on **3/1/2014** but in **April 2018** the plaintiff trespassed onto the defendant's half a point portion and planted tree seedlings without his authority. He adds that at the instance of the plaintiff the parties entered into a new agreement on **29/1/2018** which the plaintiff breached by failing to pay the full consideration. Therefore the defendant fenced off the portion to secure it from the plaintiff's act of further trespass or encroachment. In my view this action on the part of the defendant is meant to take what has already been in the hands of the plaintiff without any prior legal process having been undertaken by the defendant.

5. I have examined the plaintiff's proposed exhibits. Among them is the document dated **29/1/2018**. It appears to have a reference worded as follows:

***"RE: PAYMENT MODALITY OF EXCESS LAND- A HALF OF A POINT OF AN ACRE."***

6. It appears that from the beginning of the transaction there may have been a mistake of some sort regarding the size of the land the parties were transacting about. The defendant appears to have tried to take measures to remedy this apparent mistake. The plaintiff feels aggrieved. In my view there is evidence that the plaintiff has been on the suit land for a while. The trees that are reflected in the photographs filed with the plaint indicate that the plaintiff if he was the planter thereof had been on the premises before April, 2018, the date on which the defendant alleges the trespass occurred. In the circumstances the defendant's allegation of trespass stands to be proved and can not be taken as the truth for now. Since the plaintiff is in occupation of the suit land this court finds it necessary to order that the defendant does not interfere with the suit land in any manner pending the hearing and the determination of the suit and I hereby do so order. The suit land shall therefore remain in the hands of the plaintiff pending the hearing and determination of the suit. Other than that, the status quo in all other respects shall be maintained by both parties.

**Dated, signed and delivered at Kitale on this 19<sup>th</sup> day of September, 2018.**

**MWANGI NJOROGE**

**JUDGE**

**19/9/2018**

Coram: Before Mwangi Njoroge, Judge

N/A for the applicant

N/A for the respondent

Plaintiff in person present

Defendant in person present

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**19/9/2018**