



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 571 OF 2017

SAMUEL KIPLANGAT KOSGEL.....PLAINTIFF

-VERSUS-

ABDIKADIR MOHAMED ABDULLAHI.....1ST DEFENDANT

JAMES MICHIRA MOSIGISI.....2ND DEFENDANT

COUNTY GOVERNMENT OF NAROK.....3RD DEFENDANT

RULING

The Application before me is the Notice of Motion dated 19th October, 2017 which is brought under order 51 Rule 1 and order 40 Rule 1,2 and 4 of the Civil Procedure Rules in which the Applicant seeks for an order of injunction restraining the Defendants from entering, transferring, developing, selling or in any manner dealing with plot No. 237 Mulot Market trading centre until the hearing and determination of the application and an order directing the allocating authority to declare the Plaintiff/Applicant the absolute legal owner of the suit property.

The Application was based on the grounds that the Applicant is the owner of the suit land having purchased the same from the 1st Defendant who was the original allottee of the land and that the 2nd Defendant has unlawfully attempted to fence the property without the consent of the Applicant and he has attempted to evict the Applicant and the grounds herein stated were further expounded by the Applicant in his Supporting Affidavit and to the Affidavit the Applicant has annexed a Sale Agreement dated 30th August,2016 between him and the 1st Defendant.

The Application was opposed by the 1st and 2nd Respondents. The 1st Respondent averred that he was the owner of the suit land and he sold the same. The 2nd Defendant averred that the Plaintiff has never been in possession of the suit land and it is the 2nd Defendant who lives in and occupies the suit land.

The 2nd Defendant in his replying affidavit stated that he is the legal owner of the suit land having purchased it and he has been paying rates and rents to the county Government of Narok.

I have read the Application before me and the submissions made by counsel and the issue for determination before me is whether the Plaintiff has established the grounds for the grant of the orders of injunction, which is well settled as to establish a prima facie case, whether damages will be adequate compensation and on whose favour the balance of convenience rests.

In the instant case the Applicant alleges to have purchased the suit land from the 1st Defendant a fact which the 1st Defendant denies and states in his Replying Affidavit that he sold the land to the 2nd Defendant who has been in occupation. The ultimate grounds for determination of this case will be how the Plaintiff/Applicant came to own the land and if the person to whom he alleges to have sold the land is denying, then I find that the Applicant has failed to satisfy the first ground for grant of orders of injunction and in view of the above, I find that the Applicant has not discharged the burden of proof and hence the Applicant fails on that very important ground.

It is my finding also that the Application and the prayers sought as drawn are orders which the court is incapable of issuing at this stage. The Applicant seeks the court to order the allocating authority to declare the Applicant as the absolute legal owner, this to my mind is a final mandatory order that the court cannot issue at this interlocutory stage.

The upshot of the above is that the Application is thus not merited and I therefore dismiss the same with costs.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **24th day of October, 2018**.

Mohamed N. Kullow

Judge

24/10/18

In the presence of:

N/A for the parties and their advocates.

CA:Chuma