



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

PETITION NO. 21 OF 2015

IN THE MATTER OF ALLEGED CONTRAVENTION OF THE RIGHT TO OWN AND ENJOY PROPERTY UNDER ARTICLE 40 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE RIGHT TO COMPENSATION INCASE OF LOSS OF PROPERTY

BETWEEN

ALI GUYO SORCHA PETITIONER

VERSUS

NOOR MUHIDIN1ST RESPONDENT

COUNTY GOVERNMENT OF MARSABIT2ND RESPONDENT

LAND REGISTRAR, MARSABIT/ISIOLO.....3RD RESPONDENT

ATTORNEY GENERAL.....4TH RESPONDENT

RULING

1. This ruling is in respect of the application dated 17.9.2015 whereby applicant/petitioners urging the court to issue temporary preservative orders restraining the 1st and 2nd respondents by themselves, their agents, servants, assignees or anybody acting at their behest from evicting the applicant and his family and or otherwise interfering with their quiet possession thereof of land parcel No. 127 Marsabit Town and/or selling the same pending the hearing of this application and the petition.
2. The Applicant has filed grounds in support of the application as well as a supporting affidavit. The 1st Respondent has filed grounds of opposition and a replying affidavit where he avers that he is the registered owner of the suit land, and that Petitioner is not in occupation of the suit land.
3. The application was argued orally by counsel for petitioners on 26.9.2018. Applicant claims to be in occupation of parcel no. 127 in Marsabit Town and that he rightfully owns the same.
4. I have perused the record of the file and there is nothing to indicate that petitioner has any proprietary rights over the alleged suit land. I have seen a replying affidavit filed by 1st respondent Noor Muhidin where he has annexed a title deed to land parcel No. Marsabit/Jirme/127 where he is indicated as the registered proprietor of the land. It follows that petitioner has so far not established a prima facie case.
5. It has also not come out clearly from the petitioners regarding the alleged nature of occupation. He says that part of the land has gone to a slaughter house. The other was taken by 1st respondent. Is he really in occupation of the land? He ought to advance more particulars to support this claim.
6. I also note that the issues being raised by petitioners include fraud as well as that of ownership. These are issues that invite arguments and ought to be proved in a trial.
7. Petitioner has also not been able to state with certainty the legal regime that is governing the suit land. The title availed by 1st respondent indicates that the suit land was registered way back on 30.10.2013. On the other hand, petitioner has no title to the land. He is pegging his

claim on an adjudication process, but it is not clear which law was governing the process of land allocation concerning petitioners claim.

8. Finally, I have taken into account the **shelf life of the application**. It was filed under a certificate of urgency on **17.9.2015**, but it remained in limbo for the next three years. Even after I delivered a ruling on 30.5.2017 salvaging this petition from the jaws of dismissal, petitioners didn't do much in ensuring that the application was prosecuted speedily. In **Charter house Investment Ltd vs. Simon K. Sang & 3 Others (2010)eKLR**, the Court of Appeal Had observed that:

“Injunction is an equitable and discretionary remedy, given when the subject matter of the case before the court requires protection and maintenance of the status quo. The award of temporary injunction by court of equity has never been guaranteed as a matter of right, even where irreparable injury is likely to result to the applicant. It is a matter of sound judicial discretion, in the exercise of which the court balances the conveniences of the parties and possible injuries to them and to third parties.....”. “Equity aids the vigilant and not the indolent”, so goes the latin maxim. The applicant has certainly not been vigilant and he ought to bring the facts of this case in a trial.

9. All in all, I find that applicant has not met the criteria set down in the celebrated case of **Giella vs. Cassman Brown & Co. Ltd. (1973) E.A. 358**. The application is hereby dismissed with costs to 1st respondent. Further I direct that the petition be listed down for hearing or pre-trial direction.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 17TH DAY OF OCTOBER, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Kiome holding brief for Ondari for petitioner

Kiget for 1st respondent

HON. LUCY. N. MBUGUA

ELC JUDGE