



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 575 OF 2017

RITON OLOPUTU OLE RAMET.....PLAINTIFF/APPLICANT

-VERSUS-

BRAVIN ASHWIN GUDKA.....1ST DEFENDANT

AKASH KIRIIT GUDKA.....2ND DEFENDANT

THE DISTRICT LAND REGISTRAR

TRANS MARA SUB-COUNTY.....3RD DEFENDANT

THE DISTRICT LAND SURVEYOR,

TRANS-MARA SUB-COUNTY.....4TH DEFENDANT

RULING

The Application before me is the Notice of Motion dated 3rd November, 2017 where the Applicant sought for orders of injunction restraining the Defendants from trespassing on, laying claim and constructing on and from interfering with the Plaintiffs occupation and possession of land parcel No. Trans- Mara/Oloirien/25 which has been sub-divided into land Parcel No. Trans Mara/Oloirien 92 pending the hearing and determination of the suit herein.

The Application was based on the grounds that the 2nd and 3rd Defendants herein have purchased approximately 200 acres of the suit land and that they have sub-divided the said parcel of land and have carried out massive removal of the vegetation of the aforesaid land without the authority of the Applicants.

The Application is further supported by the Affidavit of the Applicant who deponed that he is the registered proprietor of that parcel of land known as Trans Mara/Oloirien/25 measuring 265.93 hectares and that sometimes in 2014 he approached one Jackson Katai to identify a buyer for approximately 50 acres and he was introduced to the 1st and 2nd Respondents who showed willingness to purchase the land and he was paid the sum of kshs. 400,000/- as down payment but before he could conclude the transaction a caution was placed on the title by his wife.

The Applicant further averred that in February, 2015 he learnt that the Respondents had secured the transfer of the suit in their own names and that the Respondents had used their influential position and that the transfer of the land was carried out fraudulently as he never obtained the consent of the Land Control Board to either sub divide the land and/or transfer to the Respondents.

The Application was opposed by the 1st and 2nd Respondents who filed a Replying Affidavit and they contend that the suit land was sold and transferred to them and that the instruments of transfer were lawfully executed by the Applicants and that prior to the transfer the Applicant executed a lawful Sale Agreement which the Applicant was fully aware of the terms and conditions of sale of the suit land.

The 1st and 2nd Respondents aver that by virtue of the Sale Agreement and subsequent transfer they are entitled to absolute and exclusive possession of the suit land and it is because of the above that they commenced to clear the suit land in preparation for cultivation.

The Respondents further aver that the Applicants had voluntarily signed the Sale Agreement and subsequent transfer instruments in the presence of Advocates and he had known the full tenor and purpose of what was signed. The Respondents lastly aver and contend that the suit land is currently in their names hence no orders of injunction can be granted against them.

I have read the Application before me and the submissions made by counsel for the parties. This being an Application for injunction the principle for the grant of the same have long been established in the case of **GEILLA -VERSUS- CASSMAN BROWN** which I will not reproduce herein.

The Applicant's claim against the Respondents is that he sold a parcel of land measuring about 50 acres but later realized that the Respondents have a larger parcel than that was sold. I have seen the Sale Agreement which its execution is not disputed by both the parties and the portion sold was part of LR NO. TRANS MARA/OLORIEN/92 measuring 80.92 ha for kshs. 13,000,000/- of which the Applicant acknowledged to have received the sum of kshs. 5,000,000/- and it is my finding that the Applicant from the contents of the sale agreement has not demonstrated that he has a prima facie case with probability of success.

On whether damages was an adequate remedy I find that this being a commercial transaction the Applicants claims can easily be quantified and damages will be an adequate compensation.

Lastly since the suit land is already registered in the name of the plaintiff I cannot see how an injunction can be issued in such a scenario as the balance of convenience in such a case tilts in favour of the Respondents.

In view of the above it is my finding that the Applicant has not satisfied the conditions for the grant of an injunction and the application dated 3rd November, 2017 is dismissed with costs.

Dated, Signed and Delivered in open court at NAROK on this 16th day of October, 2018

Mohammed Noor Kullow

Judge

16/10/18

In the presence of:-

Mr Ogutu for the Defendant/Respondent

Ms Adala for Kilele for the Plaintiff/Applicant

CA:Chuma