



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 181 OF 2016

MANUEL WANYONYI MUSOMELE.....APPLICANT/PLAINTIFF

VERSUS

FRANCIS WANYONYI OMINA.....RESPONDENT/DEFENDANT

RULING

1. The application dated **19th December, 2016** seeks for orders for injunction to restrain the defendant from interfering in any manner with the plaintiff's plot of land known pending the hearing of the suit.
2. The grounds on which the said application is made are that the plaintiff lawfully bought his parcel of land from the defendant as a bona fide purchase and paid the agreed amount of consideration of **Kshs.14,000/=** in cash on **31/1/2005** and that the plaintiff's peaceful occupation of the said **Plot No. Kapkoi SFT Scheme Plot No. 147** is being threatened unlawfully by the defendant who wants to demolish part of the plaintiff's plot to carve out an access road through it against the original agreement by the parties made on **31/1/2005**. It is averred that the plaintiff would suffer irreparable injury if the injunction order is refused since the plot is his place of abode and source of income.
3. The supporting affidavit is sworn by the plaintiff of **19/12/2016** was filed with the application. In that affidavit the deponent avers that though he is the bona fide proprietor of the suit premises the same have not been transferred to him formally. He avers that he took possession of the land upon payment of the agreed consideration and started developing the same with the permission of the defendant; however on **10/11/2016** the defendant threatened to demolish part of his premises for the purposes of establishing a road of access for other purchasers through the plaintiff's plot and when the plaintiff engaged the defendant he turned a deaf ear to him.
4. The respondent/defendant filed replying affidavit sworn on **13/1/2017**. He deponed that he is the lawful allottee of **Plot No. 147, Kapkoi Settlement Scheme**; that in reply to **paragraph 3**, on **31st January, 2005** he intended to sell a plot measuring **50 feet by 100 feet** to the applicant at a consideration of **Kshs.14,000/=**, out of which he paid the sum of **Kshs.7,000/=** upon execution and **Kshs.3,000/=** on **4th February, 2005**, a copy of the agreement is annexed and marked "**FWO-1**"; that it is not true that the applicant paid the entire sum of **Kshs.14,000/=** and his annexures marked "**MWM-1**" is a forgery; that the plaintiff never paid the balance of **Kshs.4,000/=** which remains unpaid to date and which he has refused to pay all along; that later on the plaintiff entered his land without his consent and took possession; that in the meantime he also sold portions of the land to other purchasers and created a **3 feet wide road** for their use; that in **2016**, the plaintiff sold a plot measuring **53 feet by 100 feet** to a third party essentially blocking the access road used by the other occupants of the plot; that **Plot No. 147** is agricultural land and still registered in favour of the Settlement Fund Trustees (SFT); that the plaintiff's supporting affidavit are denied and the plaintiff is misusing the police to perpetuate a fraud; that the plaintiff having lied to the court and uttered false and forged documents cannot be entitled to any equitable remedy; that the defendant is advised by Patrick S. Juma, who drafted in his own handwriting and also witnessed the agreement of **31st January, 2005**; that the annexed tendered by the plaintiff is not the agreement Patrick S. Juma actually drafted and that Joshua Nakitare, too who was a witness to the agreement of **31st January, 2005** denies the plaintiff's purported agreement, marked "**MWM-1**" and both confirm that is the copy referred to hereinbefore as "**FWO-1**".
5. The applicant filed his submissions on **30/10/2018** and the respondent on **29/10/2018**.
6. I have considered the submissions of the parties. It is the averment of the defendant that the plaintiff only purchased a plot measuring **50 by 100 feet** yet he has purported to sell a portion measuring **53 by 100 feet** thus effectively including a road of access measuring **3 feet wide** in the sale. It is also the defendant's position that the documents filed by the plaintiff are forged.
7. I have seen the developments exhibited by the plaintiff in his supplementary affidavit dated **30/10/2018** showing some houses built on what is said to be the suit land. They are permanent development. They stand to be affected if the orders sought are not granted.
8. In the circumstances I consider that the balance of convenience in this application lies in favour of granting the orders of injunction sought.
9. I therefore grant an order of injunction restraining the defendant from in any manner interfering with the plot occupied by the plaintiff

pending hearing and determination of the suit.

Dated, signed and delivered at Kitale on this 3rd day of December, 2018.

MWANGI NJOROGE

JUDGE

3/12/2018

Coram:

Before -Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bisonga holding brief for Nyamu for plaintiff

N/A for the defendant

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

3/12/2018