



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC CASE NO. 105 OF 2017**

**NDOVU ESTATES LIMITED.....PLAINTIFF**

**-VERSUS-**

**PETER LEMERIA OLE NTUTU.....DEFENDANT**

**RULING**

What is before the court is the Notice of Motion Plaintiff's application dated 8<sup>th</sup> August, 2016 which application was grounds on the grounds set out on the face of the application and is supported by the Affidavit of Viray Vyas. Basically the Applicants complaint is that it had leased a total of 258 acres of land known as **CIS-MARA/NGORENGORE** from the Defendant that was formerly leased to Talent firms limited for the years 2013 and 2014 and later other agreements for lease of the said land running from 2016 to 2017. The Applicant contend that the Respondent has despite the existence of the said lease taken out parallel lease with a third party and thus interfering with the applicants quiet enjoyment of said land.

The Defendant/Respondent has opposed the said application by filing a replying affidavit dated 16<sup>th</sup> August, 2016 contending that the application before court is frivolous, vexatious and an abuse of the court process. The Respondent further contends that the application has now been overtaken by event as the apprehension that existed when the certificate or urgency was filed being the harvesting of crop on the parcel of land has taken place.

The Respondent further denies the existence of a valid lease for the year 2017 and contends that the purported lease of 2017 relied upon by the applicant is a forgery, undated and unexecuted by an Advocate. The respondent also confirms that he had leased the parcel of land to Western Engineering East Africa Ltd and his duty to the Applicant was extinguished in 2016 as the lease between him and Applicant expired.

Both the Applicant and the Respondent filed further supplementary affidavits primarily to ventilate the existence of a lease for the year 2017 and each party annexed two contradictory reports by two different document examiners on the authenticity of the lease for the year 2017.

The parties had by consent filed written submissions on the application. The Plaintiff's application was filed on the 14<sup>th</sup> November, 2016 and he respondents filed theirs on the 8<sup>th</sup> February, 2017. Having reviewed the Plaintiff's/Applicant application together with the Affidavits in support thereof and the Defendants affidavit in opposition thereof and the filed written submissions the issue for determination are therefore:-

1. Whether a valid lease exist between the parties herein.

2. Whether there is a breach of the terms and conditions of the said lease.

3. Whether the Respondent has received payment in advance for the year 2017.

In answering the aforesaid issue. I have read through the said lease and the conflicting document examines report and have come to the conclusion that the issues under contention can only be answered at full trial in which the parties will be examined and cross-examined on what in my opinion is the genesis of the entire suit and will best be dealt with at trial and the court cannot at this stage resolve conflicts of evidence on the affidavits.

In an application of the nature the court needs to be convinced that the applicant has made out a prima facie case with a probability of success, be convinced that the applicant shall suffer irreparable loss if the injunction is not granted and the tilting of the balance of commerce these principles were laid down in **Geilla –Versus- Cassman Brown (1973)EA 358.**

In the instant case, I am of the view that the plaintiff has established a prima facie case against the Defendant and it may suffer irreparable loss.

In view of the above I am of the opinion that the application for injunction is merited and I thus allow the same and issue an order restraining the Defendant himself, agents, servants and/or any other person with the applicants use and enjoyment of that parcel of land known as **CIS-MARA/NGORENGORE/46** pending the hearing and determination of the suit.

The Plaintiff/Applicant shall also have costs of the application.

It is so ordered Dated Signed and delivered in open court at Narok this 20<sup>th</sup> day of February, 2017.

**Mohammed Noor Kullow**

**Judge**

**20/2/17**

**COURT**

The parties should comply with provision of orders within the next 21 days and thereafter fix the substantive suit.

Mention on 13/3/17 for confirmation of compliance.

**Mohammed Noor Kullow**

**Judge**

**20/2/17**

**Dated, signed and delivered in open court at NAROK on this 20<sup>th</sup> day of February, 2017**

**Mohammed Noor Kullow**

**Judge**

In the presence of:-

Mr. Ngaruiya advocates for the defendant/applicant

No Appearance on part of the M/S C.F. Otieno and company advocates for the plaintiff

Court Assistant: Timothy

**Mohammed Noor Kullow**

**Judge**