



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT KITALE**

**ELC CASE NO. 80 OF 2016**

**JOSEPH KAZUNGU MWANGI.....PLAINTIFF**

**VERSUS**

**JOSEPH ODERO OBWORE & 11 OTHERS.....DEFENDANTS**

**RULING**

1. This is a Ruling in respect of a Notice of Motion dated **7<sup>th</sup> September 2016**. The applicant who is the registered owner of **LR No. Kitale Municipality Block 4/437** (suit land) seek orders of injunction against the Respondents.
2. The applicant bought the suit land on 7<sup>th</sup> March 2015, from one **Sebastian Kubai M'Mairutha** at a consideration of **Kshs.8,500,000/=**. He went ahead to process the title documents which he obtained on **11<sup>th</sup> March 2015**. The applicant then approached Chase Bank who offered him a financial facility which he intended to use to put up a Petrol Station.
3. The applicant has since been unable to proceed with his plans of putting up a Petrol Station because the Respondents have encroached on to the property where they are operating their business from. The applicant therefore prays for injunction orders to stop the Respondents from obstructing him in his intended project.
4. The Respondents have opposed the applicant's application based on a Replying Affidavit sworn on 25<sup>th</sup> October 2016. The Respondents contend that they are relying on the pleadings filed herein to oppose the application. That the applicant filed a further affidavit without leave of the court and that therefore this application is incompetent.
5. The Respondents further contend that the suit property is public land and that the applicant is not entitled to any of the orders herein. That the applicants prayer that the Respondents do deposit security of **Kshs.15,000,000/=** has no basis.
6. I have gone through the applicant's application as well as the opposition to the same by the Respondents. There is no contention that the applicant is the registered owner of the suit property. The only issue for determination in this case is whether the applicant has demonstrated that he has a prima facie case with probability of success as to warrant the issue of the orders prayed for.
7. The Respondents are contending that the title held by the applicant is null and void because the property is public land. There is no iota of evidence from the Respondents that the property is public land. The Respondents are contending that the structures they have put up are on the road reserve and that they are only using the suit land as a show room.

8. The Respondents are also alleging in their pleadings that the certificate of official search exhibited by the applicant is for a property in Moi's Bridge. There is absolutely no evidence to confirm that this is the position. The Respondent's contention that the applicant filed a further affidavit without leave has no basis. The applicant was granted leave to file a further affidavit on 6<sup>th</sup> October 2016. This is the same time the Respondents were also granted leave to file their response.

9. The applicant has annexed documents to show that he acquired a loan of **Kshs.15,000,000/=** from Chase Bank. The security was the suit property. The applicant has certificate of lease for the property. The applicant has clearly shown that he has a prim facie case with probability of success. The Respondents are only obstructing him from carrying on his developments on unfounded allegations that the property is public land.

10. The applicant has exhibited photographs of sofa sets displayed on the suit land. The Respondents cannot be allowed to operate from the suit land which is the property of the applicant. The Respondent's lawyer was given time to file documents which he said he was to get from Nairobi. He finally never filed even a single document. This clearly shows that the Respondents have no single document to prove that the suit land is public property.

11. The applicant is re-paying a loan whose fruits he is not enjoying because of the Respondents actions. This is a clear case where the applicant is not only entitled to a temporary injunction but a mandatory order as well. I find that this is a case for issuance of injunction against the Respondents. I therefore allow **prayer (3) and (5)** of the Notice of Motion dated **7<sup>th</sup> September 2016**.

It is so ordered.

Signed at **Nairobi**.

**E.O.OBAGA**

**JUDGE**

Dated, and delivered at **Kitale** on this **7<sup>th</sup>** day of **March 2017**.

**F.M.NJOROGE**

**JUDGE**

In the presence of :-

Mt Wanyama for Plaintiff/Applicant

No appearance for Defendants/Respondents

Court Assistant :Isabella

**F.M.NJOROGE**

**JUDGE**