



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 111 OF 2008

MESO MULTIPURPOSE SOCIETY LTD.....PLAINTIFF

VERSUS

LUORE NYAIRO COMPANY LTD..... 1ST DEFENDANT

AGRICULTURE FINANCE CORPORATION..... 2ND DEFENDANT

THE CHIEF LAND REGISTRAR..... 3RD DEFENDANT

THE HON. ATTORNEY GENERAL.....4TH DEFENDANT

RULING

1. The Notice of Motion dated 7/2/2017 was presented to court on 7/2/2017 under certificate of urgency. It was certified urgent on 9/2/2017 but no other orders were issued. At the hearing Mr. Mokuu appearing for the plaintiff/applicant urged the court to grant prayer number (111) of the application. It reads as follows:-

“That the plaintiff/applicant herein be granted an order of injunction restraining the respondents by themselves, their agents, servants, attorneys, or any other person acting on their behalf from executing or further executing the orders of the Honourable Court made on the 17th day of December, 2009 as read with the orders of the Honourable Court made on the 11th July, 2016 and all consequential orders pending the hearing of the suit herein”.

2. The application is premised on 14 grounds set out at its foot and is supported by the affidavit of one Francis Wafula Nyongesa who states that he is the current chairman of the plaintiff. To understand better the nature of the orders being sought, one needs refer to the orders mentioned in the prayer (111) set out above;

3. The order given on 17/12/2009 reads as follows:-

(1) That the status quo ante be maintained i.e. that 1st defendant who has occupation of the land continues to occupy the same until the hearing and determination of the suit.

(2) That costs of Kshs.10,000/= to be paid by the plaintiff before moving the court any further.

4. The order given on 11/7/2016 reads as follows:-

(1) That the orders issued by this Honourable court on 13th January, 2010 be effected.

(2) That the Officer Commanding Kitale Police Station to effect the said court order dated 13th January, 2010.

(3) That costs of this application be provided for.

5. The order referred to in the order given on 11/7/2016 is the same order first referred herein above as having been given on 17/12/2009, only that it was issued on 13/1/2010. In effect, we are dealing with just one order, that was given on 17/12/2009 because the order given on 11/7/2016 appears to have been made in order to emphasize the need to enforce that order given on 17/12/2009.

6. The 1st respondent Luore Nyairo Co. Ltd had applied to court on 14/3/2016 seeking that the order of 11/12/2009 (issued 13/1/2010) be effected, with the Officer Commanding Police Station, Kitale, being ordered to effect them. The current plaintiff/applicant's application is therefore not the only instance at which the enforcement of the orders given on 11/12/2009 was in issue.

7. In the application dated 14/3/2016, Obaga J. stated as follows as paragraph 5:-

“I have carefully gone through the applicant's application as well as the opposition to the same by the respondent. A look at the record shows that on 17/12/2009, Justice Ombija gave orders that the status quo be maintained pending the hearing and determination of the suit herein. The status quo was defined in that order. The status quo was that it was the applicant who was in possession of the suitland. This is the order which was issued on 13/1/2010”.

8. In the same ruling the court relates how the plaintiff/applicant's application to restrain the 1st respondent from evicting its members had been struck out earlier on 17/2/2009. The court noted that the plaintiff/applicant's claim is based on alleged purchase of 600 acres from AFC, while the 1st defendant/respondent contended that it purchased 250 acres out of the 600 acres.

9. Before the orders of status quo were given on 17/12/2009, the court found, the Executive Officer of the court was sent to the ground, whereupon he brought a report which was relied on in issuing of the order given on 17/12/2009 and issued on 13/1/2010. The report stated that 250 acres were occupied by the 1st defendant/respondent. The court in the ruling on that application which was given on 11/7/2016 stated further as follows:-

“I find therefore that the respondent's (the current plaintiff/ applicant's) members have no basis upon which they can enter into the 250 acres occupied by the applicant (1st defendant)”.

10. Upon further perusal of the record there is one more order given by Mwilu J. (as she then was) on 5/3/2009 in which the plaintiff was injuncted temporarily from entering or in any way, interfering with the 1st defendant's user, cultivation and occupation of land parcel LR. No. 7060/4 measuring 250 acres situated at Big Tree area in Kiminini Division within Trans-Nzoia West District, pending the hearing and determination of the application dated 2/3/2009.

11. I have gone through the effort of stating the position arrived at in the stated orders and ruling in order to be able to delve into the prayer made in the application now being urged by the plaintiff/applicant.

The application, unfortunately, does not mention which land parcel is involved. It does not in any other way give a proper description of where the alleged eviction took place in such a manner that the court should be able to relate that locus with the area mentioned in the ruling of Obaga J. or the order given on 5/3/2009. If execution of the orders is being effected to ensure that the status quo as at the time of the orders made remains, this court cannot interfere with the said process as to reverse the execution of its own orders as though this was an appeal. Understandably issues relating to land in this county at times take a dramatic turn when the contestants allow emotions to overcome reason.

12. Further, if the plaintiff's/applicant's application were more clearer on the happenings, it could be open to consideration. However when all that is presented to court is an application which is not specific on what the court is to do with its own orders referred to therein, that is a defective application. At this juncture I must also mention that it is now time the plaintiff prosecuted its main case which was filed more than 8 years ago.

I have no alternative but to dismiss the application dated 7/2/2017 and I hereby dismiss it with costs to the 1st respondent only.

It is so ordered.

Dated, signed and delivered at Kitale on this **6th** day of **March, 2017**.

MWANGI NJOROGE

JUDGE

In the presence of:

Mr. Bisonga holding brief for Mr. Mokuu for Plaintiff/Applicant

Ms. Wanyama holding brief for Mr. Ambutsi for Defendant/Respondent.

Court Assistant - Isabellah.

MWANGI NJOROGE

JUDGE

6/03/2017