



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 155 OF 2016

ESTHER ANYUDUK.....PLAINTIFF

VERSUS

FLORENCE AKENO OTIENO.....DEFENDANT

RULING

1. The plaintiff filed an application dated **25/10/2016** seeking interim orders of injunction to restrain the defendant or her agents from trespassing on the land known as **LWD/KANAMKEMER/JULUK/2/001**, entering thereon, committing any act of waste or damage or in any way purporting to alienate the said land pending, first the hearing of the application *inter partes* and secondly pending the hearing and determination of the main suit.
2. The plaintiff states that she is the legal owner of the suitland; that she is recognized by the Turkana County Government as owner; that elders have confirmed she owns the property; that in **April, 2016** the defendant trespassed on the property and that she stands to suffer loss and damage due to the defendant's continual trespass.
3. Attached to the affidavit in support of the application is an agreement dated **15/1/2016** between one **John Egialan Lobur** and the plaintiff. The same is not marked as an exhibit in the affidavit. There are no statements in the affidavit addressing the content or import of the said agreement. Though the plaintiff asserts that she is a registered owner, no copy of title document or certificate of official search is annexed to the affidavit supporting the application.
4. The defendant on the other hand opposes the application by way of a replying affidavit in which she stated that she is not a trespasser but a purchaser of the land from one **John Egialan Lobur** for valuable consideration. She further avers that she and the plaintiff are co-wives of one **Musa Tioko** and her matrimonial home is on the suitland. The role of their husband in this matter, if any, has been totally eclipsed by the two women's altercations. However, I do note that the claim of the defendant to having lived on the property is not countered in any way by the plaintiff. The disclosure of the matrimonial relations alters the whole dispute from the original picture of an unrelated third party invasion painted by the plaintiff into a picture of a domestic dispute over land. The plaintiff has an agreement in her favour thumbprinted by the alleged seller. The defendant has a letter from the chief's office, Kanamkemer Location, witnessing the handing over of Kshs.200,000/= as consideration by the defendant to one John Egialan Lobur. This is further complicated by a letter from the seller's advocates to the defendant, dated 22/8/2016, in which there is a claim that the plaintiff refunded the "buyer" and "repossessed his plot". Curiously, the seller's advocate also happens to be the plaintiff's advocate in this matter.
5. The duty of the court at this interlocutory stage is to determine whether interim orders of injunction are merited. First the question would be whether the plaintiff has established that she has a prima facie case

with probability of success. Though it is yet to be proved at the hearing the plaintiff has an agreement executed by way of thumbprint by the seller while the defendant has none. The document exhibited by the defendant is of lesser probative value. The Chief's letter has yet to be proved at the hearing, and as at the moment, it does not bear as much weight as the plaintiff's agreement with the seller. Besides, the letter from the seller's advocate seems to have dispossessed the defendant of rights to the land. I therefore find that the plaintiff has established that she has a prima facie case with probability of success.

6. Would the plaintiff suffer irreparable loss if the orders sought were not granted? In this court's opinion there is imminent danger that the defendant may commence developments on the said land and considerably alter and complicate the nature of the dispute herein. On a balance of convenience, it is therefore better to have the status quo maintained pending the hearing and determination of the main suit.

7. For the above reasons, I hereby grant prayer three (3) and prayer four (4) of the application dated 25/10/2016. The costs of the application shall be in the cause.

Signed, dated and delivered at Kitale on this **29th** day of **May, 2017**.

MWANGI NJOROGE

JUDGE

29/05/2017

Before - Mwangi Njoroge Judge

Court Assistant - Isabellah

Mr. Ingosi for the Defendant/Respondent

Ruling read in open Court.

MWANGI NJOROGE

JUDGE

29/05/2017