



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LANDS COURT AT NAROK
ELC CAUSE NO. 248 OF 2017

KIBOS OLE TOME.....1ST APPLICANT
SANGENOI OLE KORTOM.....2ND APPLICANT
SHADAI OLE TOME.....3RD APPLICANT
LENTIRA OLE TOME.....4TH APPLICANT

-VERSUS-

ANN NYABOKE WACHI.....1ST RESPONDENT
ONYANCHA OMWANGE.....2ND RESPONDENT
AUGUSTUS OMWANGE.....3RD RESPONDENT
MARCELLA HENRY.....4TH RESPONDENT
GIDEON EDWARD OGORO.....5TH RESPONDENT

RULING

The Application before me is the Notice of Motion dated 21st February, 2017 seeking an order of injunction restraining the Defendants by themselves, agents, or any other person acting on their authority from entering, cultivating, leasing and transferring or interfering with the applicants' occupation and possession of the parcel of land known as **TRM/ENAENYENY/14**.

The Application was supported by the Affidavit of Kibos Ole Tome sworn on the 21st February, 2017 and the grounds on the face of the Application when the application was filed, an interim injunction was granted pending the hearing of the Application Inter-parties.

The grounds on which these applications are based on are:-

- (i) THAT the Applicants are the lawful registered owners of parcel No. TRM/ENAENYENY/14.**
- (ii) THAT the Applicants are in occupation of the disputed parcel of land.**
- (iii) THAT the Respondents have encroached into certain portions of the Applicants land and**

have tilled the same in readiness for planting.

In essence the Supporting Affidavit filed by 1st Applicant on behalf of all the other Applicants reiterates the above grounds.

The Respondents herein each had severally opposed the Application herein and filed their respective Replying Affidavits.

The Respondents have in their respective Affidavits stated that it is true that the Applicants are the registered owners of the parcel of land known as **TRM/ENAENYENY/14**, but they have purchased the portions within which they occupy from the 1st Applicant and hence the Respondents are all purchasers for value.

Each of the Applicants had annexed to their respective Affidavit various Agreements for the sale of the portions of land in respect of parcel **TRM/ENAENYENY/14** around 1997 and they have remained in possession and occupation thereof.

The 1st Applicant had by a Further Affidavit dated 25th March, 2017 stated that the alleged agreements by the 2nd and 3rd Defendants are falsehoods. He further states they wanted to refund the purchasers their money but the Respondents have refused to receive the money.

The 5th Respondent has also claimed that the Applicants are guilty of non-disclosure of material facts namely that there is a suit pending before court being **Kisii ELC Court No. 271 of 2016**.

When the Application herein was set down for hearing on 7th April, 2017 Counsel for the parties had stated that they wish to dispose the Application by relying on the Affidavits filed and hence will not be making any submissions.

I have perused the Affidavits on record together with the various annexures thereon and the issues for determination at this stage are:-

(i) Whether the Respondents have purchased any land from the plaintiff.

(ii) Whether the Applicants have established a prima facie case with a probability of success.

Having perused the Affidavit on record the Respondents contend that they purchased portions of land individually from the Applicants herein and they have annexed agreements of sale duly executed by the 1st Applicant and that they have been in possession and occupation of the land cultivating and planting crops. This is a fact that the Applicant has failed to rebut save for dismissing the Affidavits as falsehoods.

These transactions are matters which a court upon full hearing of the parties will be able to determine with finality.

From the foregoing reasons, the Applicants have not shown a prima facie case with a probability of success as established in the case of **GEILLA VERSUS CASSMAN BROWN AND COMPANY LIMITED (1973)EA 358** that before an injunction is granted on Application ought to show:-

(a) A prima facie case

(b) Damages won't be adequate compensation

(c) The balance of convenience tilts in their favour.

The Applicants in the present case have not demonstrated that they have a case with a probability of success and other condition for the grant of orders for injunction.

In the circumstances the Applicants application dated 21st February, 2017 is dismissed with costs to the Respondents and the ex parte orders granted on 21st February, 2017 are hereby vacated.

DATED, SIGNED and DELIVERED in OPEN COURT at NAROK on this 11th day of May, 2017

Mohamed N. Kullow

Judge

In the presence of:-

Mr. Ondieki holding brief for Moriasi for 2nd, and 3rd Defendant/Respondent

N/A for Morintat for the Plaintiffs

N/A for 1st, 4th and 5th Respondents/Applicants

CA:Chuma