



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC SUIT NO. 242 OF 2017

SIRERE OLE MPUSIA.....PLAINTIFF

-VERSUS-

NTALAMEA OLE KIMORGO.....DEFENDANT

RULING

The Notice of Motion before me was filed in court on 17th February, 2017 under a certificate of urgency and the same was brought under order 40 Rule 1, 2 and 3 of the Civil procedure Rules.

The Applicant seeks an order of injunction restraining the Defendant by himself, agents/servants from trespassing thereof and constructing on a parcel of land known as **CIS MARA NKARETA/483** pending the hearing and determination of the said suit herein.

The Application is based on the grounds outlined on its face that the Applicant is owner of the parcel of land known as **CIS MARA/NKARETA/483** and the Defendant/Respondent has continually trespassed on land with a view to dispossess the Applicant.

The Application was also supported by the Affidavit of Sirere Ole Mpusia which was filed together with the Notice of Motion on the 21st February, 2017. The Applicant contended that 22nd January, 1999 he entered into an agreement with the Respondent to swap his parcel of land herein being **CIS MARA/NKARETA 483** with the Respondent's parcel of land known as **CIS MARA/NKARETA 469**.

The Applicant states that it was an express term of the said agreement that both parties would undertake a joint transfer of their respective parcels of land to the other, however, the Applicant states the said transfer never materialized between the parties.

The Application was opposed by the Respondent and the same contested through a Replying Affidavit filed in court on 14th March, 2017. The Respondent states that he has been in occupation and possession of the suit land being **CIS MARA/NKARETA 483** for over two decades and that this was before the actual demarcation was done.

The Respondent states that he gained occupation and possession of the land pursuant to a land transfer agreement which he entered with the Plaintiff/Applicant. The Respondent avers that upon signing of the agreement they were to jointly actualize their transfer but they did not do so.

The Respondent did state that after failure of the actualization of land transfer agreement the suit land was registered in the name of the Applicant.

I have read the Application herein together with the annexures thereon and having heard the counsel for the parties the issue for determination at this stage is whether the Applicant herein has established a prima facie case for the grant of an order of injunction.

I have perused the agreement the parties had entered which is the foundation on which the present case is based. The parties had expressly agreed that they will not only physically transfer the land but will also undertake to effect the transfer.

The property is currently also registered in the name of the Applicant which in mind is the initial base within which an interest in land can conclusively be maintained.

Further to the above, the parties have not demonstrated at this interlocutory stage what factors may have hindered them from effecting the transfer of the land.

In view of the above, I find that the Applicant has demonstrated a prima facie case as held in the case of **GEILLA –VERSUS- CASSMAN BROWN & COMPANY LIMITED (1973)EA 358.**

Further I also hold that the Applicant being the registered owner of the land the balance of convenience falls in his favour.

The upshot of the above is that I will allow the application dated 17th February, 2017 with costs to the Applicant.

Dated, Signed and Delivered in open court at **NAROK** on this 5th day of **May, 2017**

Mohammed Noor Kullow

Judge

In the presence of:-

Ms Morintat for the Defendant/Respondent

Ms Andama for the Plaintiff/Applicant

CA:Chuma