



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CASE NO. 104 OF 2017

CHELTIFF TOURS AND SAFARIS LTD.....PLAINTIFF

-VERSUS-

MARTIN NKONGE NJAGI T/A LITTLE OLERAI LUXURY.....DEFENDANT

RULING

The Applicant has through an Application dated 22nd December, 2016 sought an order of eviction against the Defendant from Plot No. 116 Siania adjudication section and further an order of Injunction against the Defendant from gaining entry and access to the property.

The Application is based on several grounds as contained in the Notice of Motion that was filed. The Applicant contends that it had entered a lease agreement with Endoinyo Narok Sekenani Group Ranch in respect of the parcel of land known as Number 116 Siana Adjudication section and the purpose of the lease agreement was to establish a Tented Camp Facility. The Applicant confided into the Respondent that he was taking up a job in a foreign country and he wanted the Respondent to manage the business. The Applicant further avers that prior to this he had erected 6 tents and made an investments of about kshs. 12,000,000/-.

The Applicant alleges that upon return to the country he was denied access to the business by the Respondent and he is apprehensive that the business and its assets will be wrongfully and unlawfully acquired by the Respondent.

The Application was supported by the Affidavit of Chris Kamanu who is the Managing Director of the plaintiff company where he more or less expounds on the grounds upon which the application is based.

The Application was opposed by the Respondent by way of a Replying Affidavit. The Respondent in reply to the allegations voiced by the Applicant contends that he has entered into a lease with Endoinyo Narok Sekenani Group Ranch and that the Respondent is the legal tenant of the aforesaid Group Ranch and has been paying rent.

The Respondent further states in his Replying Affidavit that the Respondent never agreed with the Applicant to manage a business on its behalf.

The parties in the matter had canvassed the application before me by way of written submissions and the same was highlighted by counsel appearing.

I have read the Application together with the Supporting Affidavit, the Replying Affidavit and written submissions that were filed by the parties and in my mind the issue for determination at this stage is who is the lawful leasee of that parcel of land known as **CISMARA/SINAI 'A'/116** and whether the

Applicant has met the condition for the grant of the orders sought out in the Application.

To answer the first question, I must form the onset point out looking at the pleadings in the matter. This is a business of venture that has gone south between the parties. Both parties have each annexed a lease agreement that they purport to have signed with the owners of the property. This lease rather than resolve the matter of who is the true lease shrouds the entire question into a mystery and I therefore believe this can only be determined at full hearing.

On the second issue of whether the Applicant has established the grounds for the grant of an injunction. I am not satisfied that he had effectively established the grounds. The Applicant has only annexed to the Application a contested lease agreement. He has not demonstrated that he is paying Rent for the land nor has he shown that he is in actual occupation of the suit land and in view of those facts alone the Applicant has not sufficiently demonstrated that it will suffer loss and damage that will not be adequately compensated by damages.

I will therefore decline to allow the application dated 22nd December, 2016 and I dismiss the same with costs to the Respondents.

Dated, Signed and Delivered in open court at **NAROK** on this **21st** day of **July 2017**

Mohammed Noor Kullow

Judge

21/7/17

In the presence of:-

Ms Shitubi holding brief for Ms Bikambo for the Respondent

Mr Jumba holding brief for Kokul for the Plaintiff/Applicant

CA:Chuma