



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 48 OF 2017**

**VINCENT MOSONGO KENYARIRI and CHRISTOPHER ORINA KENYARIRI**

*Suing on behalf and as the administrators of the estate of*

**KENYARIRI KENYARIRI.....PLAINTIFF**

**VERSUS**

**SAMWEL ONGANGA ONGATI.....1<sup>ST</sup> DEFENDANT**

**FRANCIS MORURI.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiffs' application dated 16/3/2017 seeks a temporary injunction to restrain the defendants from trespassing, tilling, ploughing, planting, dealing or in any manner interfering with the plaintiffs' quiet possession use and enjoyment of land parcels only described as **Nos. 167 and 223 in Kilima/Gesarate Settlement Scheme**.
2. The grounds on which the application is based are that the defendants do not have any proprietary rights, that they are using violence to block the applicants from entering into the parcels, and that the defendants intend to plough and plant in time within the season of March to April, 2017.
3. The plaintiffs have filed an affidavit sworn by the 2<sup>nd</sup> plaintiff on 16/3/2017 in support of the application. The 1<sup>st</sup> respondent has filed a replying affidavit sworn on 10/4/2017.
4. It is the plaintiffs' case that they are the administrators of the estate of one **Kenyariri Kenyariri** who died on **22/4/1992** and who owned the land parcels **Nos. 167 and 223 in Kilima Gesarate Settlement Scheme** measuring **5 and 15 acres** respectively. The plaintiffs aver that the defendants had been ploughing the land prior to 2017 on lease terms, but in November, 2016, the 2<sup>nd</sup> plaintiff/notified the defendants that he would commence to use and plough the disputed lands. Pursuant to that notification the 2<sup>nd</sup> plaintiff ploughed the two parcels of land but when he went back to the land to replough and plant the defendants and an armed mob confronted the plaintiff and his servants and ordered them out of the suit land.
5. According to the affidavit of service sworn by Samwel Nyangau Getonto, on 20/3/2017, he served the plaintiff, the current application upon the 1<sup>st</sup> defendant, who accepted to receive the same on his own behalf and on behalf of the 2<sup>nd</sup> defendant.

6. In response the 1<sup>st</sup> defendant states in his affidavit that he does not know the plaintiffs, that the defendants have never trespassed on the land parcels in dispute and have only leased the land; that they never employed violence upon the plaintiffs; that the plaintiffs have never ploughed on the suit lands; that the 1<sup>st</sup> defendant is the one who ploughed the land pursuant to a lease and he planted on the land prior to the commencement of this suit; that there was a written lease whose copy he exhibits as “Exhibit S001”; that from the chief’s letter dated 3/4/2017 the 1<sup>st</sup> defendant understood that the authority to lease the said land was with two other persons and not the plaintiffs; that the defendants never received the alleged demand letter, and that he could not have expended monies on ploughing and planting on the land if he knew it was disputed.

7. The 1<sup>st</sup> defendant avers that his only wish is to harvest the maize in the farm and surrender the farm to the family of the late Kenyariri Kenyariri, and that the application herein is an abuse of the court process.

8. In the witness statement filed on 10/4/2017 the 1<sup>st</sup> defendant reiterates the contents of the affidavit in reply to this application. He states that he had been informed by two other sons of the deceased, who are named in the chief’s letter dated 3/4/2017.

9. There is no further affidavit from the plaintiffs to rebut the averments of the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant is said to be a son to the 1<sup>st</sup> defendant and has sought to be struck out of the proceedings.

10. The plaintiffs appear not to have placed all the relevant facts before the court. From the picture that is created by the pleadings there is material non-disclosure of facts by the plaintiffs and it appears that there may be a dispute relating to the land between the plaintiffs and other persons who may have a sense of entitlement and who leased out the land to the defendants, and who are not enjoined to this suit.

11. The defendants are not claiming any ownership of the land. They have expressly said so. They have legally gotten onto the land by way of a lease, a fact which the plaintiffs acknowledged, without information that the persons who leased the land to them had no authority. Had the plaintiff’s engaged the defendants in advance they would have gotten the proper information, and would have known that the defendants do not seek to remain on the land by use of force.

12. The plaintiffs also failed to state clearly the terms of the lease. However, from their pleading they appear not to object to the past action of leasing the land to the defendants by third parties who are said to be related to them.

13. As a result of failure to provide full disclosure, I do not find the plaintiffs to be deserving of the orders sought. The application dated 16/3/2017 is hereby dismissed with costs to the defendants.

14. The defendants shall be allowed to harvest the crop on the land at the end of the season but shall not plough again if so desired to desist from ploughing by the plaintiffs. The applicants shall bear the costs of this application for the reasons stated hereinabove.

Dated, signed and delivered at Kitale on this **28<sup>th</sup>** day of **September, 2017**.

**MWANGI NJOROGE**

**JUDGE**

**28/09/2017**

Before – Mwangi Njoroge Judge

Court Assistant – Picoty

Ms. Kameo for the Defendants

Mr. Barongo for the Plaintiff

**COURT**

Ruling read in open court in the presence of counsel for the parties.

**MWANGI NJOROGE**

**JUDE**

**28/09/2017**