

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAJIADO
ENVIRONMENT AND LAND COURT
ELC CASE NO. 687 OF 2017

ENG. ISAAC GATHUNGU WANJOHI.....PLAINTIFF

VERSUS

MOSES KIRUTI LEMPASO1ST DEFENDANT

GRACE WAITHIRA2ND DEFENDANT

NIXON KIRUTI.....3RD DEFENDANT

RULING

The application before this Court is Plaintiff's Notice of Motion dated 9th May 2017 brought pursuant to Section 3A & 3 of the Civil Procedure Act and Order 40 rule 1 & 2 of the Civil Procedure Rules and all the other enabling provisions of the law. The application is based on the following grounds which in summary are that the Plaintiff is the registered owner of all that parcel known as KAJIADO/KITENGELA/27302, the Defendants are interfering with his occupation and possession of the suit land including developments thereon. Further that efforts to solve the dispute and reconciliation have come to nought.

The application is supported by the affidavit of ENG. ISAAC GATHUNGU WANJOHI the Plaintiff herein where he deposes that he bought the property through a public auction conducted by GARAM INVESTMENTS on 21st December, 2012 for Kshs. 11, 500,000/=. Further that the suit property initially belonged to M/S OLEKASASI LIMITED who had charged it to Consolidated Bank Limited and after the said public auction, the bank executed the relevant Completion Documents after which he was issued with a title deed on 28th August, 2015. He avers that on 15th December, 2015 he applied for Consent for Sub Division of the 'Suit Property' which was granted on 16th December, 2015. He states that in October 2016 when he visited the suit property together with his agent with the intention of subdividing it, he was confronted by the 2nd and 3rd Defendants who claimed the land belonged to them together with the 1st Defendant who is the husband to the 2nd Defendant and father to 3rd Defendant respectively. Further that in November 2016 he sent a surveyor to subdivide the suit land but they were confronted and assaulted by a gang of goons led by the 3rd Defendant, with the matter being reported to the TUALA Police Post vide OB No. 4/8/11/2016. The said Defendants acts were also reported to the Area Chief who summoned them, but they failed to heed to the summons. He deposes that the Defendants have persisted on their respective acts of interfering with the suit property.

On the 31st May, 2017 the Plaintiff's application proceeded unopposed but it is noted from the affidavit of service filed in court on the same day that the Defendants' were duly served on 22nd May, 2017. Upon perusal of the court record, it is further noted that the Defendants never filed a replying affidavit nor Grounds of Opposition to oppose the Plaintiff's application dated the 9th May, 2017.

Issues and Determination

Upon perusal of the materials presented by the Plaintiff in respect of his claim and upon hearing submissions from his Counsel, I find that the only issue for determination at this juncture is whether the

Plaintiff is entitled to the temporary injunction sought.

The Plaintiff stated he is the owner of the suit land having purchased it through a public auction by GARAM INVESTMENTS on 21st December, 2012 for Kshs. 11, 500,000. Further that the Defendants have interfered with his peaceful possession and occupation of the suit land. Attempts to subdivide the suit land has been rendered futile due to the Defendants' acts of interference and trespass. The Court notes that there is no evidence presented by the Defendants to rebut the Plaintiff's claim. It is in that regard that the Court finds that the Plaintiff's application dated 9th May, 2017 is merited and allows it with costs.

Dated signed and delivered in open court at Kajiado this 25th September, 2017.

CHRISTINE OCHIENG

JUDGE

REPRESENTATION

Parties absent

Court Assistant Mpoye