



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 126 OF 2017**

**WILLIAM MATELONG..... PLAINTIFF**

**VERSUS**

**THE CHAIRMAN B.O.G.AIC KAPKOI**

**SISAL SECONDARY SCHOOL.....1<sup>ST</sup> DEFENDANT**

**DAVID BUNDOTICH.....2<sup>ND</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR**

**TRANS-NZOIA COUNTY.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. The plaintiff filed an application dated 13/7/2017. In it he sought an order to issue to restrain the defendants, their agents or workers from entering into, encroaching, trespassing, subdividing, damaging structures, fencing, felling trees, blocking access road to or in any other way dealing with the plaintiff's quiet possession, use and enjoyment of the land or doing any acts that are inconsistent with the plaintiff's right as the legal or rightful owner of all that parcel of land known as **Waitaluk/Kapkoi/block 10 (Kapkoi Sisal)/180 2 A/R** pending the determination of the suit.

2. The plaintiff states that he is the bona fide owner of the suit land of which he has been in peaceful possession since 1990. He avers that the 1<sup>st</sup> and 2<sup>nd</sup> defendants have falsely laid a fictitious claim of ownership and want to deprive the plaintiff his lawfully acquired land. The 3<sup>rd</sup> defendant, the plaintiff states, has issued a notice to the plaintiff to immediately remove the structures on the land and give vacant possession of the suitland.

3. The plaintiff exhibits an "application" dated 30/9/1991. The "application" is a letter to the District Commissioner, written on the letterhead of the Deputy Provincial Commissioner Trans-Nzoia District. It states as follows in part:-

**"The bearer of this letter named above has been to see me in connection with piece of land (3 acres) at Moi's Bridge which he says is Crown Land and which he has been using to operate a sawmill. He has applied for a loan for KIE for improvement of the sawmill but the KIE would like to have the consent or a document for the plot. Since the plot is in your district please give him an audience with a view to assisting him if possible".**

4. The 2<sup>nd</sup> defendant filed a replying affidavit sworn on 3/8/2017 in opposition to the application. He

avers that the plaintiff has not demonstrated that he has *locus standi* to bring the application and the suit as he has not filed any documents evidencing his ownership of the suitland. He avers that he is not claiming the suitland and that he has no intent to interfere with the same as he has his own land. He annexed letters of allotment issued in his name regarding those other parcels that he owns. He avers he is not a necessary party to the suit.

5. The 1<sup>st</sup> and 3<sup>rd</sup> defendants opposed the application by way of a replying affidavit sworn by one Philip Kosgei on 22/8/2017. The deponent avers that the Notice of Motion is incurably defective; that the 1<sup>st</sup> defendant is a public school; that the land in question is a public utility plot meant for a cattle dip; that in the year 2014, the school committee of the 1<sup>st</sup> defendant agreed to officially hand over the said Plot No. 35 to the school; that records at the school office and the lands office show that the school is situated on Plot No. 35 and that the school is a stranger to the allegations of interference with the suitland; that the Registry Index Map shows that there is no such land as **Waitaluk/Kapkoi/block 10 (Kapkoi Sisal)/180 2 A/R**, and that the plaintiff has not shown that he applied to the Government to be allocated the suitland though he has admitted that the same was Government land. A copy of green card for Plot No. 35 is exhibited in the 1<sup>st</sup> and 3<sup>rd</sup> respondents replying affidavit as “Exhibit PK-5”.

6. To merit an interlocutory injunction an applicant must demonstrate that he has a *prima facie* case with probability of success, that he would suffer irreparable injury which would not be adequately compensated by an award of damages. If the court is in doubt, it will determine the application on a balance of convenience.

7. The plaintiff does not have title to the land. He does not even have an allotment letter. He only has the letter whose contents are set out herein above. This is not sufficient to prove ownership of the land. On the other hand, the 1<sup>st</sup> and 3<sup>rd</sup> defendant’s contention that the land is a public utility plot is not disputed by the plaintiff. I must agree with the defendants that the plaintiff has nothing to demonstrate ownership of the land in question. The plaintiff’s exhibits in both the supporting affidavit and the further affidavit are not helpful in this regard. I find that the plaintiff has not demonstrate that he has a *prima facie* case with a probability of success or that he stands to suffer any damage that cannot be compensated for by an award of damages.

8. I therefore dismiss the plaintiff’s application dated 13/7/2017 with costs to the defendants.

Dated, signed and delivered at Kitale on this **19<sup>th</sup>** day of **September, 2017**.

**MWANGI NJOROGE**

**JUDGE**

**Ruling read in open court in the presence of:-**

**Mr. Bisonga for the 2<sup>nd</sup> defendant**

**Mr. Omboto for the plaintiff – absent**

**N/A for the 1<sup>st</sup> and 3<sup>rd</sup> respondents - absent**

**Court Assistant – Isabellah.**

**MWANGI NJOROGE**

**JUDGE**

**19/09/2017.**