



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 60 OF 2017

PAUL JUMA CHEBUS.....PLAINTIFF

VERSUS

MOSES KAPKITUI.....1ST DEFENDANT

JOHN KIBOI KAPKITUI.....2ND DEFENDANT

R U L I N G

1. By an application dated **4/4/2017** the plaintiff sought an order that the defendants and their agents be restrained by way of a temporary injunction from claiming, ploughing, occupying, planting or using **one acre** out of **Plot No. 45 Chepkuy Co-operative Society** till the hearing and determination of this suit.

2. The grounds on which the application is made are that the applicant is the bonafide purchaser of one acre at Chepkuy Co-operative Society Plot No. 45, and that the applicant has been in use and occupation of the said plot since the year 2011; that however on 20/3/2017 the 2nd defendant stormed the suitland and claimed ownership rights; that the 2nd respondent has invaded the land and ploughed the one acre comprised therein; and that this action is uncalled for and unlawful. The second respondent is a son to the first respondent

3. The application is opposed. The replying affidavit of Moses Kiptumuno Kapketui has been filed. He has been given authority to swear the affidavit in opposition to the application by the 2nd respondent. He avers that the applicant is guilty of nondisclosure; that he did not sell any land to the applicant; that the sale agreement exhibited by the applicant is a forgery; that the land in issue is part of a school farm which he could not have sold in view of the fact that the school need more land for expansion; that the school of which he is a director has been utilizing the land all along; that the 2nd respondent did not storm the land as the same has been in the defendants' occupation and use; that it is the applicant who attempted to invade the land in February, 2017; and that the orders sought are not merited.

4. The agreement exhibited by the applicant suggests there was a sale transaction between the applicant and the 1st respondent in the year 2011. There is also other evidence to suggest that the applicant has been in possession of the suitland and that he has been cultivating.

5. At this interlocutory stage the court is only required to satisfy itself that the applicant has a *prima facie* case with probability of success and that he would suffer irreparable damage if the orders sought are not granted

6. I find that the applicant has established a prima facie case with probability of success and I grant an order of temporary injunction restraining the respondents and their agents from in any way interfering or

dealing with the suitland until the hearing and determination of the main suit herein.

Dated, signed and delivered at Kitale on this 9th day of October, 2017.

MWANGI NJOROGE

JUDGE

9/10/2017

Before – Mwangi Njoroge Judge

Court Assistant – Isabellah/Picoty

Mr.Wafula for Applicant

Mr. Ambutsi holding brief for Chebii for Respondent

COURT

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

MWANGI NJOROGE

JUDGE

9/10/2017