

REPUBLIC OF KENYA
THE ENVIRONMENT & LAND COURT

AT GARISSA

ELC CASE NO. 52 OF 2017

MWASI MUSYOKA.....PLAINTIFF

VERSUS

MWENGA MUNUVE.....DEFENDANT

RULING

The application before me is the Notice of Motion dated 14th November, 2017 brought under certificate of urgency. The applicant has not cited the provisions of the law under which the application has been brought. However, the applicant has stated in his certificate of urgency that on 4/11/2017 the respondent entered into his unsurveyed piece of land situated at Kyethani farm and kyungu farm and started ploughing, destroying fence, grazing his livestock and cutting down trees without his consent. The same facts are repeated in his supporting affidavit sworn the same date.

The applicant further contends that on 7/11/2017 he reported to the OCS Tseikuru police station over threats by the respondent to harm him and his family. On 10/11/2017 he reported to his area chief who wrote a letter the same day which is annexed to the supporting affidavit and marked "KM2". A letter from the OCS Tseikuru police station is also annexed to the said affidavit and marked KM1. In his replying affidavit sworn on 4th November, 2017, and filed on 5th December, 2017 the plaintiff/respondent opposes the application and contends that he is the rightful owner of all those pieces of land known as Kyethani and Kyunyu farm having inherited them from his late gather Musyoka Munuve.

The respondent further avers that he has been using the two farms and that he has done developments such as planting/ploughing and planting trees. The plaintiff/respondent further contends that he has been utilizing the two parcels of land until the year 2013 when the defendant/applicant called for Anzauni clan meeting where he was claiming to own the two parcels of land. None of the two parties to this dispute cited any authorities or filed and submissions as both of them act in their personal capacity.

I have considered the affidavit evidence by both parties to the dispute herein. The subject matter of this application are two un-surveyed parcels of land situated at Kyethani farm and Kyunyu farm. Though the applicant has not cited the provisions of the law for which he is seeking to orders, my discernment is that the applicant is seeking injunction order pursuant to order 40 CPR. The parcels of land in dispute are un-surveyed parcels of land which the parties claim to have ancestral interest. Since the applicant has not produced any documents of ownership and has not shown what injury he stands to suffer if the orders are not granted.

I shall decide this case on a balance of convenience. In my view, the balance of convenience tilts in favour of orderings the parties to maintain the status quo as at the filing of this suit on 18th July, 2017. The OCS Tseikuru police station and the area chief to supervise the enforcement of this order pending the land adjudication of the affected area.

The costs of the operation shall be costs in the cause.

Read and delivered in the Open Court this 13th December, 2017.

E. C Cherono (Mr.)

ELC Judge

In the presence of:

1. Plaintiff (Applicant)
2. Defendant (Respondent)
3. Ijabo –Court Clerk