



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

CASE NO. 21 OF 2004

KEFA K.

WERE:.....PLAINTIFF

VERSUS

BENEDICT

CHEPKERING:.....DEFENDANT

RULING

1. The Defendant/Applicant Benedict Jepkering Bitok filed a notice of motion dated 16.6.2015 in which she seeks orders of injunction restraining the Plaintiff/Respondent from interfering with plot No.300 at Kosprin Settlement Scheme (suit-land). The suit-land is said to be 10 acres. The applicant contends that the suit land was allocated to her by the Settlement Fund Trustee in 1989. That since that time, she has never enjoyed the fruits of the suit-land because the Plaintiff/Respondent is in occupation of the same and has refused to move out of it.
2. The applicant contends that the respondent has already sold three acres of the suit land and that if he is not restrained by way of injunction, he will proceed to sell the suit-land and hence cause irreparable loss to her.
3. The respondent has opposed the applicant's application through a replying affidavit sworn on 13.7.2015. The respondent contends that he is the lawful allottee of the suit-land having been allotted the same by the settlement fund Trustee in 2001. The suit-land had been initially earmarked for one Kiprono Langat who however did not get it because he did not meet the terms of the offer. The suit-land was later allotted to him.
4. The respondent further contends that the applicant had been allotted plot No.595 at Kapkoi Settlement Scheme but later sought to swap the allotment with the suitland. He further avers that in the year 2003, he filed a dispute with the defunct Kwanza Land Disputes Tribunal over the suitland. The dispute was resolved in his favour. The verdict of the panel of elders was then adopted as a judgement of the court vide Kitale Senior Principal Magistrates land Case No.54 of 2003. This judgement has never been set aside.
5. I have carefully considered the applicant's application as well as the opposition to the same by the respondent. The principles for grant of an injunction are now well settled. First an applicant has to demonstrate that he has a prima facie case with probability of success. Secondly an injunction will not normally be granted unless otherwise the applicant might suffer loss which will not be compensated in damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.
6. In the present case, both the applicant and the respondent have annexed copies of documents to show that they were allotted the suitland by the Ministry of Lands through the Settlement Fund Trustee. The respondent has however demonstrated through documents that the applicant had been allotted plot No. 595 at Kapkoi Settlement Scheme. She however petitioned the Ministry of

Lands for exchange of the allotment with that of the suitland which was in a different scheme. It is apparent that her request was granted despite the fact that the respondent was on the ground and the suitland had been allotted to him. The problem here seems to be double allocation and the handwritten comments on the correspondence attached to the respondent's affidavit confirms as much.

7. There is also a judgment in favour of the respondent which judgement has never been set aside. Though the applicant argues that the said judgement was obtained ex-parte and that she is challenging it in a counter-claim contained in her amended defence, a look at the court record shows that though she was granted leave to file an amended defence and counter-claim, none was filed. Her former advocates later filed an application seeking to enlarge time within which to do so but the record shows that that application was never prosecuted. There was therefore no amended defence and counter-claim filed. This explains why there is no reply to the proposed amended defence and defence to the counter-claim. This is a sad story which was caused by delay in prosecuting the case and partly due to change of lawyers as in this case.
8. The applicant had filed a similar application for injunction on 14.12.2009. This application was set down for hearing on 2.2.2010 but there is no record whether the same was heard or what became of it. It is not known whether it was withdrawn or not as no records are available to confirm this. Be that as it may, I do not find that the applicant has demonstrated that she has a prima facie case given the documents availed by the respondent.
9. The respondent is the one who has been in occupation of the suitland. Even if I were to entertain any doubts as to who between the applicant and the respondent is in possession of genuine documents, the balance of convenience would dictate that the injunction as sought by the applicant should not be granted. I therefore dismiss the applicant's application with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 21st day of January,2016.

E. OBAGA

JUDGE.

In the presence of Mr. Analo for Mr. Waweru for the Respondent.

Court Assistant - Isabellah.

E. OBAGA

JUDGE