



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 102 OF 2015

SIMON MBUGUA

THUNGU.....PLAITNIFF

VERSUS

**THE COUNTY GOVERNMENT OF TRANS-NZOIA.....1ST
DEFENDANT**

**ISAIAH WANYONYI.....2ND
DEFNDANT**

**THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT.....3RD
DEFENDANT**

**THE COUNTY LAND ADJUDICATION AND
SETTLEMENT OFFICER TRANS-NZOIA.....4TH
DEFENDANT**

**THE CHIEF LAND REGISTRAR.....5TH
DEFENDANT**

R U L I N G

1. The second Defendant/Respondent Isaiah Wanyonyi is the registered owner of LR. No. Trans-Nzoia/Zea/375 which is about 20 acres (suit land). The plot is at Zea settlement scheme within Trans – Nzoia County. The land was initially owned by the Agricultural Development Corporation (ADC) who surrendered it to the Settlement Fund Trustee for allocation. The applicant Simon Mbugua Thungu filed a notice of motion dated 10.8.2015 in which he sought for an injunction restraining the 1st, 2nd and 3rd respondents, their servants, agents, employees or anybody acting through them from entering surveying demarcating and/or sub-dividing the suit-land pending hearing and determination of the suit herein.
2. The applicant contends that he is the beneficial owner of the suit land which was formerly known as, ADC Zea plot No. 406. The applicant contends that he purchased plot No.406 on 25.2.1998 from one Elizabeth Cherosio who had been allotted the same by the ADC. That he has been cultivating the suit land which forms part of some 268 acres where he has been growing maize. He contends that the suit land is in the middle of the 268 acres he is utilizing and that it is difficult to locate it without causing extensive damage to him.
3. The applicant contends that the suit land was unprocedurally given to the second respondent. The applicant's application was triggered by a letter dated 25.6.2015 from the County Surveyor

intimating that he was unable to carry out boundary demarcation on the suit land.

4. The second respondent has opposed the application based on a replying affidavit sworn on 26.10.2015 in which he contends that the suit land was lawfully allotted to him by the Settlement Fund Trustee and that he has since obtained title to the same. That if there is any plot that the applicant acquired from Elizabeth Cherosio, then it is plot No. 406A and that the applicant has not demonstrated that plot No. 406A or 406 has any nexus with the suit land.
5. The third, fourth and fifth respondents on their part contend that the applicant has not demonstrated that he has a prima facie case with probability of success.
6. This is an application for injunction. The principles for grant of temporary injunction are now well settled. Firstly an applicant must demonstrate that he has a prima facie case with probability of success. Secondly, an injunction will not normally be granted unless the applicant shows that he will 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.
7. In the instant case, the first question which has to be answered is whether the applicant has demonstrated that he has a prima facie case with probability of success. In the case of *Mrao -vs- First American Bank of Kenya Limited & 2 others* (2003) KLR 125, a prima facie case was described as follows:-

“ A prima facie case in a a civil application includes but is not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.

8. In the instant case, the applicant is contending that plot No.406 which he bought from Elizabeth Cherosio is the one which was later registered as the suit land. The applicant has annexed a sale agreement between him and Elizabeth Cherosio. In that agreement, Elizabeth Cherosio was selling her 20 acres comprised in ADC plot No.406.

There is no evidence given by the applicant to show that plot No.406 which he bought is the one which became plot No. 375 (suit land).

9. When the applicant realized that the second respondent had been registered as owner of the suit land, he wrote a letter dated 20.7.2015 to ADC asking them to confirm the ownership of plot No.406. ADC wrote back on 24.7.2015 stating that Zea ADC Farm had been surrendered to the Settlement Fund Trustee but according to their records, plot No. 406A measuring 20 acres was in the name of the applicant. This letter from ADC seems to complicate matters for the applicant. If the applicant bought plot 406 from Elizabeth Cherosio, how come then the records held by ADC show that the applicant is owner of plot No.406A?
10. The applicant has not demonstrated that plot No.406 or 406A is the same as the suit land. According to his own documents, there is no basis upon which this court can hold that he has demonstrated that he has a prima facie case with probability of success. I therefore find that the applicant has not demonstrated that he has a prima facie case with probability of success.
11. The applicant will not suffer any loss which will not be compensated in damages if it turns out that he is the one entitled to the suit land and that it was fraudulently or unprocedurally given to the second respondent. I have no doubt in my mind on the way this application will go. I will therefore not consider the balance of convenience. Even if I were to consider it, there is no way an injunction can issue in the face of the documents presented before this court. Prima facie, it is the second respondent who is the legal owner of the suit land and he should not be prevented from enjoying it at the moment. I find that the applicant's application cannot be allowed. The same is hereby dismissed with costs to the respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this 23rd day of February 2016.

E. OBAGA

JUDGE.

In the presence of Mr. Ingosi for second respondent.

Court Assistant - Isabellah.

E. OBAGA

JUDGE

23/2/16