



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 6 OF 2016**

**JOHN KIBET BII.....PLAINTIFF**

**VERSUS**

**MARTIN KIRONGET MOGOI.....DEFENDANT**

**R U L I N G**

1. The Applicant **JOHN KIBET BII** is the allottee of **Plot No. 1169 at Kitalale Settelement Scheme phase III**. The Respondent **MARTIN KIRONGET MOGOI** is the son of the late **JONATHAN KIRONGET** who was the allottee of **Plot No. 461 at Kitalale Settlement Scheme Phase III**. The Applicant brought a Notice of Motion dated 18/1/2016 in which he seeks orders of injunction restraining the Respondent from interfering with **Plot No 1169 at Kitalale Settlement Scheme Phase III** (Suitland).

2. The Applicant contends that sometime in 2007, the Respondent who is a man of violent character invaded the suitland and planted some trees on it. The Applicant sought the intervention of the Provincial Administration and later the police who had the Respondent arrested but was released on police bond never to be seen again. He contends that the Respondent who resides away from the suitland comes to the suitland and ploughs it before going away. The Applicant has repeatedly trespassed on to the suitland and the Applicant has repeatedly made reports to the police who have finally advised him to seek redress in a civil court hence this application.

3. The Respondent has opposed the application by the Applicant based on a replying affidavit sworn on 9/2/2016 and filed in court on the same date. The Respondent denies trespassing into the suit land and contends that the application herein is misconceived. He contends that he is staying on **Plot No 461** which was allocated to his late father **JONATHAN KIRONGET**. His father was shown **Plot No 461** by the surveyors where he settled until his demise. The Respondent has since remained on the land allocated to his late father.

4. The Respondent contends that the Applicant has resorted to filing this suit having failed to remove him from land known as **461**. The Respondent argues that if the application is allowed, it will amount to dispossessing him of the land without being heard. He contends that the Applicant has not demonstrated that he has a case with probability of success.

5. I have considered the Applicant's application as well as the opposition to the same by the Respondent. This is an application for injunction. In an application of this nature, the Applicant is expected to demonstrate that he has a prima facie case with probability of success. Secondly such a remedy may not be granted unless otherwise the Applicant might suffer loss which will not be adequately be compensated in damages. Thirdly if the court is in doubt, it will decide the application on a balance of convenience.

6. In the instant case, the Applicant has demonstrated through Letter of Allotment that he is the allottee of the suitland. The Respondent is not laying any claim on the suitland. The Respondent states that he is on **Plot No 461** which had been allotted to his late father. The Applicant filed a supplementary affidavit in which he annexed a letter from the District Land and Adjudication Office Trans-Nzoia. This letter written on 1/3/2016 confirms that there exists **Plot No 1169** and **461**. **Plot 1169** was allotted to the Applicant and **Plot No 461** was allotted to the Respondent's father.

7. Prima facie, there is no doubt that the Applicant is the allottee of the suitland. However it is also clear from the averments in the supporting affidavit and replying affidavit that it is the Respondent who is in possession of the suitland. I am fortified in this finding by the actions the Applicant has been taking against the Respondent. The Respondent has previously been issued with a compelling order by the police. The offence mentioned in the order is forcible detainer. The Respondent will not have been issued with such an order if he was not in possession of the suitland.

8. The Applicant has never used the suitland at least from 2007 to date. Though there is confirmation from the Land Adjudication and Settlement office that there exists the suitland and **Plot 461**, there is no evidence yet to confirm that the two plots are distinct from each other. The Allotment letter given to the deceased's father states that the allotment supercedes any previous allocation. This therefore implies that there may have been previous allocations. It is therefore important to have this matter heard so that evidence can come out whether the Defendant's occupation on the ground is where **Plot No 461** is supposed to be or if the Defendant is occupying land meant for the Applicant.

9. If it turns out that what the Respondent thinks is **Plot 461** is actually not that plot but **Plot 1169**, the Applicant can always be compensated in damages. It is therefore clear that this application must be decided on a balance of convenience. The balance of convenience tilts in favour of the Respondent who is in occupation and has been in occupation. The import of this finding is that the Applicant's application hereby fails. The same is dismissed with costs to the Respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 5th day of April 2016.

**E. OBAGA**

**JUDGE**

In the presence of M/s Khaoya for Mr Ngeiywa for Applicant.

Court Assistant: Winnie

**E. OBAGA**

**JUDGE**

**5/4/16**