



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 141 OF 2014

TIMOTHEO KUTETE CHETAMBE.....PLAINTIFF/RESPONDENT

VERSUS

WYCLIFFE WAKOLI SIMIYU.....1ST DEFENDANT/APPLICANT

JULIUS AMUKA.....2ND DEFENDANT

R U L I N G

1. The Applicant in this application is the first defendant in this suit. The applicant filed an application for injunction against the Plaintiff/Respondent. He moved to Eldoret ELC Court where he obtained a temporary injunction restraining the Plaintiff/Respondent from interfering with an unsurveyed plot known as **Plot No. C Block 5** within Kitale Municipality. The temporary orders of injunction were given on 24/11/2015.

2. The application by the applicant was not heard on a number of occasions due to the issue of representation. The applicant had changed lawyers on more than three occasions. On 24/3/2016 the application by the applicant was fixed for hearing on 19/4/2016. When the application was called out neither the applicant nor his advocate were in court. The application was dismissed for non attendance.

3. The applicant filed an application on 23/5/2016 seeking to have the orders dismissing his application set aside. The applicant who is now acting in person contends that he was not informed about the hearing date by his lawyer.

4. The application is opposed by the respondent on the ground that there is no good reason which has been given by the applicant as to why he did not attend court. That the application belonged to the applicant and that it was upon the applicant to follow it up and not simply leave it to his lawyer. That the applicant's lawyer has not sworn an affidavit to explain why he did not attend court.

5. I have carefully gone through the applicant's application as well as the opposition thereto by the respondent. The applicant in the present case is the one who has been sued. The respondent had applied for an injunction which injunction was dismissed as it was not possible to determine who was the true owner of the suit land as both the applicant and respondent has allotment letters.

6. What the applicant was seeking in the dismissed application was a counter-injunction. The applicant has not stated the reason why he or his advocate did not attend court. This is clearly a matter which can be resolved through full hearing. Injunctions and counter-injunctions cannot help. As the applicant has not

given a good reason why he or his lawyer were not in court on 19/4/2016, I find that his application lacks merit. The same is hereby dismissed with costs to the respondent. The parties should proceed to fix the suit for full hearing so that the ownership dispute can be solved once and for all.

It is so ordered.

Dated, signed and delivered at Kitale on this **25th** day of **July, 2016**.

E. OBAGA

JUDGE

In the presence of Applicant.

Court Assistant - Isabellah.

E. OBAGA

JUDGE

25/7/2016