

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 111 OF 2008

MESO MULTRI-PURPOSE SOCIETY LTD.....PLAINTIFF

VERSUS

LUORE NYAIRO COMPANY LTD.....1ST DEFENDANT

M/S AGRICULTURAL FINANCE

CORPORATION.....2ND DEFENDANT

THE CHIEF REGISTRAR.....3RD DEFENDANT

RULING

1. The Applicant **Luore Nyairo Company Limited** filed an application dated 14/3/2016 in which it seeks orders that the court orders which were issued on 13/10/2010 be effected and that the Officer commanding Kitale Police station (OCS) do effect the said order. The Applicant contends that members of the Plaintiff/Respondent have invaded the suitland and have erected structures on the same contrary to the orders of the court which were issued on 13/10/2010. That the applicant has sought assistance of the police to effect the order but that the police have been reluctant to do so claiming that the order is not directed at the police to assist.
2. The Applicant ploughed the suitland ready for plaintiff but the Respondent's members invaded it and started putting up structures on the same. The Applicant went to replough the land but its agents were chased away. The Respondent's actions have made it impossible for the Applicant to utilise the property.
3. The Respondent has opposed the application based on a replying affidavit sworn on 1/ 4/ 2016 and another one sworn on 5/4/2016. The Respondent contends that the application is an abuse of the process of court. That the orders of 13/1/2010 have been overtaken by the orders of the Court of Appeal which were given on 28/10/2015. The Respondent further contends that if the Applicant was aggrieved by the orders given by the Court of Appeal, it should have preferred an appeal against those orders to the Supreme Court of Kenya.
4. The Respondent argues that its members have been on the suitland since 1989 and that the members cannot be said to be intending to invade the suitland. The Respondent further argued that the orders of the Court of Appeal in essence granted them what they were asking i.e not to be evicted from the land they had been occupying.
5. I have carefully gone through the Applicant's application as well as the opposition to the same by the Respondent. A look at the record shows that on 17/12/2009, Justice Ombija gave orders that the status quo be maintained pending the hearing and determination of the suit herein. The status quo was defined in that order. The status quo was that it was the Applicant who was in possession of the suitland. This is the order which was issued on 13/1/2010.
6. Prior to the orders of 17/12/2009 being issued, the Respondent had filed an application for injunction against the Applicant . The Respondent obtained interim orders restraining the Applicant from evicting its members. On 28/1/2009, the Applicant sought to have interim orders extended but the court declined to extend them. A preliminary objection which had been raised

against the application for injunction was argued. A ruling was delivered on 17/2/2009 striking out the Respondent's application.

7. The Respondent appealed against the order refusing to extend interim orders and the order striking out the Respondent's application for injunction. On 28/10/2015, the Respondent withdrew the appeal. There was an order that the status quo be maintained and that the hearing of this suit was to be expedited. The Appellant was also given costs of the appeal.
8. It is important to note that the Plaintiff/Respondent's claim is based on 600 acres which it contends that it bought from the Agricultural Finance Corporation (AFC). The Defendant/Applicant also contends that it purchased 250 acres out of the 600 acres. Before the orders of maintenance of status quo were given on 17/12/2009 the executive officer of the court was sent to the ground. He brought a report which informed the order which was given on 17/12/2009 and issued on 13/1/2010. The report clearly stated that the 250 acres were occupied by the Defendant /Applicant.
9. The orders of 20/10/2015 from the Court of Appeal did not change the position obtaining since the order of 17/12/2009. The order of 17/12/2009 was never a subject of the Appeal in the Court of Appeal. The Court of Appeal did not set up a new status quo. Were this to be the case, then it should have been expressly stated in the order. I therefore do not agree with the submission by the Respondent that the order of Court of Appeal overtook that of the High Court given on 17/12/2009 and issued on 13/1/2010. The Respondents may be occupying part of the 600 acres but the order of maintenance of status quo was specific to the 250 acres occupied by the Applicant. I therefore find that the Respondents members have no basis upon which they can enter into the 250 acres occupied by the Applicant. The orders of 17/12/2009 which were issued on 13/1/2010 are still valid and ought to be respected. The police should assist in effecting the said orders. I therefore find that the Applicant's application is well founded. The same is allowed as prayed with costs.

It is so ordered.

Dated, signed and delivered at Kitale on this 6th day of July 2016.

E. OBAGA

JUDGE