



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 35 OF 2008

SIMATWA KAPTUWAI NJAMET..... PLAINTIFF

VERSUS

GEOFFREY KISA SIMATWA.....1ST DEFENDANT

LINUS SIMATWA.....2ND DEFENDANT

R U L I N G

1. The applicant is the father of the two respondents. The applicant had sued the respondents seeking a declaration that he was the sole owner of **LR. No. Kiboroa/Kipsagam/34** and a permanent injunction restraining the respondents from interfering with the same.

2. On 20/5/2014 the applicant and the respondent compromised the suit through a consent in which the applicant gave the respondents **five acres** and he remained with **fifteen acres**.

Surveyors were sent to the ground and excised the five acres for the respondents.

3. The respondents briefly confined themselves to the five acres but in February, 2016, they ploughed a portion of the land which had been retained by the applicant. When the applicant asked them why they were doing this, they became violent and threatened to dispossess him of his entire portion. This is what prompted the applicant to come to court seeking a permanent injunction to restrain the respondents and or their servants from interfering with his 15 acres.

4. The respondents have opposed the applicant's application through replying affidavit sworn on 22/6/2016. They deny that they have cultivated any portion of the applicant's land. They allege that contrary to the applicant's allegations, it is the applicant who is out to disposes them even the five acres which they were given.

5. I have carefully considered the applicant's application as well as the opposition to the same by the respondents. To begin with, this is a concluded matter. A consent has already been recorded settling the dispute. The consent has already been adopted as judgment of the court. What the applicant is simply asking the court is protection by way of injunction from the respondents' actions. Though the respondents are denying that they have ploughed part of the applicant's land, I have no doubt that they have interfered with the applicant's portion given the acrimonious history of this matter.

6. This is not an application where the issue of whether the applicant has disclosed a prima facie case is to be considered. The case is already concluded. The applicant is at liberty to come to court for injunction orders to protect his property even after judgment. He had prayed for a permanent injunction in his

plaint. As the respondents seem not to be contented with the five acres which they were given, I find that the applicant is perfectly in order to seek a permanent injunction against the respondent. I therefore find that the applicant's application is meritorious. The same is allowed in terms of **prayer (2)** of the notice of motion dated **11/3/2016**. The costs of this application shall be borne by the respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this **30th** day of **August, 2016**.

E. OBAGA

JUDGE

COURT

Ruling signed in court at 2.42 pm in the absence of parties who were aware of today's date.

Court Assistant – Isabellah.

E. OBAGA

JUDGE

30/8/16