



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 84 OF 2016**

**FRED MAOGA NYAMBAROBA..... PLAINTIFF**

**VERSUS**

**PETER KIPKURUI LANGA..... DEFENDANT**

**RULING**

1. The applicant filed an originating summons on 20/5/2015 in which he seeks to be declared to have acquired **LR. No. Trans-Nzoia/Kiptoi/156** (suitland) by way of adverse possession. He contemporaneously filed a notice of motion in which he seeks an order of injunction against the respondent restraining him from evicting him from the suitland.

2. The applicant contends that he entered into two separate agreements with the respondent for purchase of portions of the respondent's land then comprised in **LR. No. LR. No. Trans-Nzoia/Kiptoi/49** which was subsequently subdivided resulting in the suitland. One agreement was made on **27/4/1992** and another one on **3/4/1994**. The applicant took possession of the purchased portion and has remained on it to date. The respondent did not take him before the land control board for consent and by dint of provisions of the Land Control Act, the transaction became null and void on the expiry of six months. The applicant therefore became a trespasser and he now contends that he has acquired the suitland by adverse possession.

3. The applicant contends that the respondent has already filed a suit seeking to evict him from the suitland. That is why he has come to court seeking an order of injunction restraining the respondent from evicting him.

4. The respondent has opposed the application by the applicant through a replying affidavit sworn on 21/6/2016 and filed in court on 28/6/2016. The respondent contends that he is the registered owner of the suitland which was carved out of **LR. No. Trans-Nzoia/Kiptoi/49**. That sometimes in **1996**, he allowed the applicant to come into the suitland as he looked for where he was to go. That he subsequently asked the applicant to move out but that the applicant has refused to move out of the suitland. That the applicant without any justifiable reason caused a caution to be lodged on the register in respect of the suitland.

5. I have gone through the applicant's application as well as the opposition to the same by the respondent. There is no contention that the applicant is the one on the suitland since 1990's. A caution was registered in favour of the applicant on 29/12/1998. The applicant was claiming purchaser's interest. Now the issue for determination in this application is whether the applicant has demonstrated that he has a prima facie case with probability of success. A prima facie case has been held to mean an arguable case not necessarily one which will succeed but one on which a reasonable court or tribunal directing its mind properly based on material presented before it can say that the applicant has made a case which will require the opposite party to respond. *See Mrao -vs-First American Bank of Kenya Ltd & 2 Others [2003] eKLR.*

6. In the instant case the applicant has demonstrated that he purchased portions of land from a parcel known as Plot No. 49 at Kiptoi. The plot was later subdivided and one portion of it is the suitland. The respondent alleges that the applicant came to the suitland with his permission and not as a purchaser. The applicant has demonstrated that as early as 1998, he had lodged a caution against the title to the suitland claiming purchaser's interest. He has annexed copies of sale agreements. The applicant has also annexed

a copy of plaint in respect of a suit which the respondent has filed against him seeking his eviction.

7. On the basis of the documents presented to the court, I find that the applicant has demonstrated that he has a prima face case with probability of success. The applicant has been on the suitland for over 21 years. If he is evicted from the suitland, and the same is sold before his case is heard and determined, I do not think that there can be adequate compensation to him. This is a land issue and he may not get a similar land elsewhere. The issue of damages does not therefore arise in the circumstances.

8. Even if I were to consider the balance of convenience, the balance of convenience tilts in favour of grant of injunction. The applicant is the one in possession. He has been in possession for over 21 years. The respondent has only filed a suit seeking to evict him in the year 2015. This is a clear case where an injunction ought to issue to protect the interest of the applicant. I therefore allow the applicant's notice of motion dated 18/5/2016 and filed in court on 20/5/2016 in terms of **prayers 3 and 4.**

It is so ordered.

**Dated, signed and delivered at Kitale on this 18<sup>th</sup> day of August, 2016.**

**E. OBAGA**

**JUDGE**

In the presence of Ms. Wanyama for Mr. Momanyi for Applicant. Court Assistant – Isabellah.

**E. OBAGA**

**JUDGE**

**18/8/2016**