



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 43 OF 2007

JOHN KUNDU KHISA.....PLAINTIFF/RESPONDENT

VERSUS

KENNEDY KHISA KUNDU.....DEFENDANT/APPLICANT

R U L I N G

1. The applicant filed a notice of motion dated 9/6/2015 in which he seeks the following reliefs:-

(i) Spent

(ii) Spent

(iii) That the honourable court be pleased to grant an order of permanent injunction restraining the plaintiff/respondent herein from executing the decree herein on land parcel number 53D which is part of Chepkorok Farm Company Limited LR. No. 5777/3 which does not form part of the land parcel which was the subject of the suit herein.

(iv) That costs be provided for.

2. The applicant herein is son to the respondent. The applicant had filed this suit against the respondent seeking an order of eviction and permanent injunction restraining the applicant from interfering with **Plot No. 50 at Sikhendu Market**. The respondent also filed an application seeking a mandatory injunction which sought orders of removal of the applicant from the suit premises and return of the applicant's properties which the applicant had removed from the suit premises.

3. The applicant who had been duly served with the application for mandatory injunction never replied to the same. The application proceeded ex-parte and Justice Ombija allowed the same in a ruling delivered on 11/2/2009. The applicant tried to have the ruling of Justice Ombija reviewed in vain. In the meantime the respondent tried to persuade the applicant to move out of the suit premises in vain.

4. On 9/5/2016, the respondent obtained an eviction order against the applicant. The eviction order was duly served upon the applicant prompting the filing of the present application. The applicant contends that the respondent is using an eviction order obtained in respect of **Plot No. 50 Sikhendu Market** to evict him from **Plot No. 53D** which has nothing to do with the decree obtained by the respondent in this suit.

5. The respondent has opposed the applicant's application based on a replying affidavit sworn and filed on 5/7/2016. The respondent contends that the applicant's application is misconceived and that it is intended to mislead the court into issuing orders which will sustain the applicant in the suit premises. That the respondent is not claiming anything in **Plot No. 53D Chepkorok Farm** and that if the applicant had any case against him in respect of **Plot No. 53D**, he should do so in separate suit and that a permanent injunction cannot be issued at interlocutory stage.

6. I have carefully considered the applicant's application which I must say at the outset is an abuse of the process of the court. The applicant has preferred an appeal against one of the rulings of this court. He came for stay pending appeal which application was dismissed. He is now coming to court trying to get a permanent injunction to protect a property which is not the subject of this suit.

7. The applicant is alleging that the respondent is seeking to execute on **Plot No. 53D Chepkorok Farm Company Ltd.** A look at the eviction order which was obtained by the respondent clearly shows that the respondent is seeking to execute on **Plot No. 50** which is the subject matter of the suit. The respondent is categorical that he has nothing to do with **Plot No. 53D** and is not seeking to execute against it. If the applicant had demonstrated that the eviction was in respect of **Plot No. 53D**, then he would have had a case. However here is a case where the respondent is seeking to execute a decree in his favour and which is directed to the right property.

8. Mr. Mokuia for the applicant has cited the decision of the Court of Appeal in Kisumu **Court of Appeal Civil Application No. NAI 41 of 1985 between Batholomew Muyale and Shem Nyambasi & Another.** In this case, the plaintiff had obtained judgement in respect of a property known as LR. No. Kabras/Bushu/952, but he sought to execute against a property known as LR. No. Kabras/Bushu/852. This case is clearly distinguishable from the present case. There is nothing to show that the respondent herein is seeking to execute against property known as **Plot No. 53D**. The truth of the matter is that the applicant is trying to mischievously obtain orders which will sustain him in the suit property. I find that the applicant's application lacks merit. The same is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 28th day of September, 2016.

E. OBAGA

JUDGE

COURT

Ruling signed at 14.45pm in the absence of parties who were aware of date and time of delivery of ruling.

Court Assistant - Isabellah

E. OBAGA

JUDGE

28/9/2016