



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
LAND CASE NO. 39 OF 2016

MAURICE OGERO NYAKUNDI

(suing as personal representative of the estate of

JOHN NYAKUNDI OGERO.....PLAINTIFF/APPLICANT

VERSUS

THE COUNTY LANDS & SETTLEMENT

OFFICER TRANS-NZOIA.....1ST DEFENDANT/RESPONDENT

THE NATIONAL LAND COMMISSION.....2ND DEFENDANT/RESPONDENT

JOSEPHKIPRONO.....3RD DEFENDANT/RESPONDENT

JOHN KETER..... 4TH DEFENDANT/RESPONDENT

ATTORNEY GENERAL..... 5TH DEFENDANT/RESPONDENT

RULING

1. The applicant is the administrator of the estate of his late father **John Nyakundi Ogero** (deceased) who died on **29/12/1995**. The deceased was the allottee of **Plot No. 309** at **Kanyarkwat Settlement Scheme** (suitland). The suitland is **20 acres**.
2. The applicant brought an amended notice of motion dated 13/6/2016 in which he seeks an injunction restraining the respondents or their agents from entering, ploughing, wasting or doing anything on the suitland. He also sought for an order of inhibition, inhibiting registration of any dealings on the suitland.
3. The applicant contends that after the demise of the deceased, he has been growing maize on the suitland. On diverse dates in the month of September, 2015, he visited the offices of the first respondent who verbally informed him that the suitland had been re-allocated to the third and fourth respondents and that he was going to be evicted by the two respondents. He further contends that unless an order of injunction is issued and an order of inhibition granted, the respondents will continue with their unlawful acts.

4. The applicant's application is opposed by the fourth respondent through replying affidavit sworn on 15/7/2016. The fourth respondent contends that the applicant has no capacity to bring this suit against him and that no orders of injunction can be given on a property which is not identifiable. That the applicant has not demonstrated that the suitland has been subdivided into two portions.

5. The fourth respondent further contends that the applicant's application is full of contradictions and that there is no evidence that he owns any portions of the suitland. That the applicant obtained grant of letters of administration after he had filed the suit and application for injunction. He further contends that the applicant's annexure do not clearly show the plot in issue.

6. I have carefully gone through the applicant's application, pleadings as well as his submissions. I have also gone through the replying affidavit by the fourth respondent, the defence filed herein as well as his submissions. The only issue for determination in this application is whether the applicant has demonstrated that he has a prima facie case against the respondents to warrant issuance of an injunction or inhibition orders.

7. Firstly the applicant annexed a letter dated 23/2/1982 from the Department of Settlement which was addressed to the deceased. In this letter the deceased was informed that he had been allocated 20 acres at Kanyarkwat Settlement Scheme but he was advised not to visit the scheme as the process of demarcation was going on and the plots had not been given numbers. The applicant also annexed another letter dated 9/8/1983 from Department of Settlement addressed to the deceased. This letter was referring to the deceased's application for allocation vide his letter of 17/2/1982. The letter advised him to visit District Settlement Officer Kitale and pay Kshs3,000/= being 10% deposit and conveyance fee. These two letters did not point out the specific plot which had been allocated.

8. The applicant also annexed a third letter dated 10/7/1984 from the District Settlement Officer Trans-Nzoia to the Director of Settlement Nairobi confirmed that the deceased had been allocated **Plot No. 309 at Kenyarkwat Shirika Settlement Scheme**. It is not clear whether Kanyarkwat Settlement Scheme and Kanyarkwat Shirika Settlement Scheme are one and the same. However be that as it may, the issue for determination remains whether the applicant has demonstrated that he has a case against the respondents.

9. The applicant merely says that he went to the settlement office Kitale where he was informed that the suitland had been subdivided into two portions and re-allocated to the third and fourth respondents. There is absolutely no document which shows that this is the position. The applicant is and has been in possession of the suitland ever since the deceased died. The third and fourth defendants have not gone to the ground to interfere with his possession. No court of law can grant an injunction based on hearsay.

10. If it is true that the suitland has been re-allocated to the third and fourth respondents as the applicant alleges, he should at least have obtained documents from the settlement office to show that this is the position. According to the applicant, he was informed about this new development in September, 2015. He had ample time to establish the truth or otherwise and bring documentary evidence. Without any documents to back up his claims, I find that he has failed to show that he has a prima facie case against the respondents. The third and fourth respondents have not trespassed to the suitland and therefore there is no loss which he has or is likely to suffer. I find that the applicant's application has no merits. The same is hereby dismissed with costs to the third and fourth respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this 19th day of September, 2016.

E. OBAGA

JUDGE

In the presence of Applicant.

Court Assistant – Isabellah.

E. OBAGA

JUDGE

19/9/2016