

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 109 OF 2016

JOHN KIMISOI MAIYOPLAINTIFF

VERSUS

STEPHEN MEROKA NYAMBEGADEFENDANT

R U L I N G

1. The plaintiff/applicant filed a notice of motion dated 15/7/2016, in which he seeks an order of injunction restraining the defendant/respondent from interfering with **LR. No. Trans-Nzoia/Mito Mbili/141**. The applicant contends that he sold seven acres out of **LR. No. Trans-Nzoia/Mito Mbili/141** to the respondent. That the respondent has since encroached on to his portion of land known as **LR. No. Trans-Nzoia/Mito Mbili/238** and that he has since been trying to bring a surveyor to the ground to confirm the boundary but that respondent has resisted his efforts to have the surveyor confirm the boundary.

2. The applicant's application is opposed through a replying affidavit of the respondent sworn on 2/8/2016. The respondent contends that the applicant's application is an abuse of the process of court as the applicant has filed another suit being *Kitale ELC. No. 140 of 2015* which seeks similar orders as in the present case. That the injunction is being sought on a non existent title and that a court cannot grant orders in a vacuum.

3. I have gone through the applicant's application as well as the opposition to the same by the respondent. The only issue for determination is whether the applicant has demonstrated a prima facie case against the respondent to warrant issuance of injunction orders. A look at the pleadings filed by the applicant shows that he was the registered owner of **LR. No. Trans-Nzoia/Mito Mbili/141**. He sold seven acres to the respondent. The property was subdivided into two portions. Title number **Trans-Nzoia/Mito Mbili/141** was closed on subdivision and it yielded **Trans-Nzoia/Mito Mbili/237** which is registered in the name of the respondent and **Trans-Nzoia/Mito Mbili/238** which is registered in the name of the applicant.

4. It is therefore clear that there is no such property known as **LR. No. Trans-Nzoia/Mito Mbili/141**. The sub-division occurred in 2003. There is no evidence that there is encroachment on to **Plot. No. Trans-Nzoia/Mito Mbili/238**. A person cannot be enjoined from enjoying his property. The applicant has not demonstrated that he has any prima facie case against the respondent. The applicant has filed *ELC No. 140 of 2015* in which he is represented by a lawyer. He decided to file this one where he is acting in person. This is a clear abuse of the process of the court. I do not find any merit in this application. The same is hereby dismissed with costs to the respondent.

It is so ordered.

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

E. OBAGA

JUDGE

In the presence of applicant.

Court Assistant – Isabellah.

E. OBAGA

JUDGE

6/10/16