

REPUBLIC OF KENYA.

IN THE ENVIRONMENT & LAND COURT AT KITALE.

LAND CASE NO. 147 OF 2014.

JOSEPH KIPREPEI LOTUKEI PLAINTIFF.

VERSUS

STEPHEN TOROITICH KORKOUDEFENDANT.

R U L I N G.

1. The applicant and respondent are step brothers. They are sons of Korkou Tongouchin (deceased). The deceased had two wives. In 1986 the deceased sub-divided his land amongst his two wives. In 1992 there was a dispute between the applicant and his step brother Christopher. Christopher was complaining that the sub-division of their father's land was supposed to be among sons and not wives of the deceased. Christopher also raised an issue that there was a son of the deceased who was born out of wedlock and was staying at Lelan. Christopher then insisted that the deceased's son born out of wedlock (the respondent herein) should get a share of the land. It was then agreed that each house was to give two acres to the respondent.
2. The applicant who is from the second house gave out two acres. It was expected that the first house was also to give the respondent two acres. In 2003 the applicant learnt that when the surveyor came to curve out the land and give it out to the respondent, he curved out 5 acres from the second house alone. The land of the first house was not touched. He also discovered that the respondent had had himself registered as owner of the entire five acres belonging to his mother from the second house. The respondent had all along utilised 2 acres given. The applicant then filed a claim before the elders who found that the respondent was only entitled to 2 acres from the second house. The elders ruled that the respondent should claim the rest of the land from the first house. The elders verdict was adopted as a judgment at Kitale Law Courts.
3. On 16/9/2014, the respondent fenced the entire five acres and is now threatening to evict the applicant from his 3 acres. The respondent started intimidating the applicant using police and vowing to go ahead with the fencing.
4. The respondent who was duly served with the application as well as summons to enter appearance neither entered appearance nor filed any grounds of opposition or replying affidavit. I have gone through the applicant's application as well as the pleadings and the documents in support of the application. The principles for grant of injunctions are now well settled. First an applicant has to demonstrate that he has a prima facie case with probability of success. Secondly an injunction will not normally be granted unless the applicant will suffer irreparable injury. Thirdly if the court is in doubt, it will decide the application on a balance of convenience.
5. In the instant case, the applicant has demonstrated that he has a prima facie case with probability of success. There is a verdict of elders which shows that the respondent was to have 2 acres from the second house and another two from the first house. The second house has already given him 2 acres. He has to get the other acres from the first house. He cannot seek to have all the acres from the second house alone. I do not have to consider the other principles. I find that the applicant's application is well founded. The same is allowed with the result that an injunction is hereby issued against the respondent in terms of prayer 3 of the notice of motion dated 10/11/2014.

Costs shall be in the cause.

It is so ordered.

[Dated, signed and delivered at Kitale on this 20th day of January, 2015.]

E. OBAGA.

JUDGE.

In the presence of M/s. Arunga for Mr. Katina for the applicant.

Court Clerk – Kassachoon.

E. OBAGA.

JUDGE.

20/1/2015.