



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 59 OF 2014

NAHASHON OCHIENG ONYANGO PLAINTIFF

VERSUS

FLORENCE M. OCHIENG)

BENARD OSORE)

BENJAMIN OSENGO) DEFENDANTS

PHILIP OPIYO)

RULING

1. The applicant is the husband of the first respondent and father to the second, third and fourth respondents. The applicant had filed Kitale HCCC No. 31 of 2009 against the present respondents among other people. This suit was compromised through a consent entered on 25/11/2013. It was agreed that the applicant was to subdivide his land comprised in IR No. 13623 amongst his wives and children. It was specifically stated in the consent that the first respondent herein was to have seven acres out of the applicant's land. The parties were to enjoy their allocated portions without interference.

2. On 15/12/2014, the applicant filed a notice of motion in which he sought a temporary injunction against the respondents restraining them from entering ploughing, planting or weeding on portions under occupation and use by other family members other than the portions shown to them by the applicant. The applicant contends that he subdivided his land as per the consent recorded in Kitale HCCC No. 31 of 2009. He showed the respondents their portions but that the respondents have refused to take up the portions shown to them arguing that it is not the applicant to choose for them where to go.

3. The applicant contends that the respondents have threatened to plough other family members portions and that if they are not restrained, there will be bloodshed in the family.

4. The respondent have opposed the applicant's application through replying affidavit sworn by the first respondent. The first respondent contends that there has been no subdivision and that if any sub-division was to be done, the same should comprise the matrimonial home. The first respondent further contends that the suit land was acquired through her joint efforts with the applicant and that therefore other wives of the applicant should not come in.

5. The respondents contend that they have not ploughed the land as alleged and that they

have not encroached on to any other family members portions.

6. I have gone through the applicant's application as well as the respondents replying affidavit. The court had granted an injunction in Kitale HCCC No. 31 of 2009 restraining the respondents and others from utilizing the applicant's land. The present respondents moved to the court of Appeal which reversed the orders of the High Court. The respondents who were the appellants were allowed to utilize the applicant's land for subsistence farming without leasing it out to third parties until the hearing and determination of Kitale HCCC No. 31 of 2009.

7. As said hereinabove, Kitale HCCC No. 31 of 2009 was compromised in terms of the consent therein. The applicant was to sub-divide his land amongst his wives and children. There is no evidence that the applicant's land has been sub divided and completed in terms of the consent. The applicant did not demonstrate that he has allocated the respondents their portions. What the applicant has annexed is a proposed sub-division plan. The applicant has not indicated where the respondents are and where they are supposed to move to. The applicant has made generalized allegations that the respondents are threatening to plough portions of other family members. Those portions of other family members are not shown. It is therefore not possible to restrain someone from land which is not specified.

8. I find that this application has no basis. The same is hereby dismissed with no order as to costs.

It is so ordered.

Dated, signed and delivered at Kitale on this 25th day of February, 2015.

E. OBAGA

JUDGE

**In the presence of Mr Kaosa for applicant and M/S Bett for Mr Ingosi for respondents.
Court Clerk – Kassachoon.**

E. OBAGA

JUDGE

25/02/2015