

REPUBLIC OF KENYA

IN ENVIRONMENT AND LAND COURT AT KITALE

CASE NO. 64 OF 2014

THOMAS ONSERIO OKERIO..... APPLICANT/PLAINTIFF

VERSUS

ROBINA NGITI OKERIO)

ALFRED MOMANYI).....RESPONDENTS/DEFENDANTS

R U L I N G

1. The applicant filed a notice of motion dated 10/10/2014 in which he seeks an injunction against the second respondent restraining him from interfering with 2 acres comprised on Plot No. 41 at Geta farm (suit land). The applicant states that he bought the suit land in the year 2000 from the first respondent who is his biological mother. Sometime in March 2014, the second respondent invaded the suit property and demolished the applicant's semi permanent house and started ploughing the land.
2. The applicant contends that the second respondent has no right or claim over the land and that he is using police from Kachibora Police Station to assist the 2nd respondent to plough the land. The applicant contends that the 2nd respondent has already ploughed the suit land and that unless he is restrained, he will go ahead to plant on the suit land.
3. The first respondent has filed a replying affidavit in which she depones that in the year 2000, she agreed with her sons to sell the suit land to the applicant who is her biological son. The applicant paid the full purchase price. The first respondent was later informed that someone had demolished the applicant's house. She denied ever selling the same land to the second respondent.
4. The second respondent opposed the application by the applicant through a replying affidavit sworn on 13/5/2014. The respondent does not state what interest he has in the land. He has generally denied the applicant's allegations. He contends that he has no control over what police officers do.
5. I have carefully considered the applicant's application and the opposition thereof by the second respondent as well as submissions by the counsel for the parties to this suit. The principles for grant of a temporary injunction are well settled. Firstly an applicant must demonstrate that he has a prima facie case with probability of success. Secondly an injunction will not normally be issued unless the applicant might otherwise suffer loss which will not be compensated in damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.
6. In the instant case, the applicant has demonstrated that the first respondent is the allottee of the suit land. He has also demonstrated that he bought the suit land from the first respondent. An agreement to this effect dated 19/5/2000 was annexed to the supporting affidavit. The first respondent has sworn an affidavit confirming that she sold the suit land to the applicant after consulting her family members. The second respondent has not stated what interest he has on the suit land. He has indirectly admitted that he ploughed the suit land as police officers were guarding him because he has stated in his replying affidavit that he has no control over what police officers do. In the circumstances I find that the applicant has demonstrated that he has a prima facie case with probability of success. The second respondent is merely ploughing the suit land

with impunity and has not shown any interest in the land. I find that the application herein is well merited. The same is hereby allowed with costs to the applicant.

It is so ordered.

Dated, signed and delivered at Kitale on this 9th day of March, 2015.

E. OBAGA

JUDGE

In the presence of Mr Mokuia for 1st respondent and Mr Kaosa for applicant. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

9/3/2015