

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 35 OF 2015

ROSE MORAA MOTURI PLAINTIFF

VERSUS

JOSECK MWANGULI..... DEFENDANT

RULING

1. The applicant filed a Notice of Motion dated 13/3/2015 in which she seeks an injunction to restrain the defendant/respondent, his servants, agents and assigns from interfering with her peaceful use and possession of **Plot No. 2, Masaba Nyakoigwana Farm** (suit land) pending hearing and determination of the suit herein. The applicant contends that she is a bona fide owner of the suit land and that the respondent has without any justifiable reason claimed the same on the ground that she bought it from one **Kemunto Onkware**.
2. The applicant further contends that the said Kemunto Onkware had sued her in **Kitale HCCC No. 78 of 2012** claiming that the suit land belonged to her but that the court ruled that the suit land did not belong to her. She further states that the respondent approached her with a view to getting back the money paid to Kemunto Onkware so that he could give back the suit land. The applicant deposited **Kshs.280,000/=** with her lawyer for onward transmission to the respondent but that the respondent declined to collect the money. The applicant contends that she is a single mother who depends on the suit land to sustain herself and her immediate family.
3. The applicant's application is opposed by the respondent through a replying affidavit sworn on 25/5/2015. The respondent contends that he bought the suit land from Kemunto Onkware on **22/3/2013**. Kemunto Onkware was among the founding members of **Masaba Nyakoigwana Farm** who had been allotted **Plot No. 2** in **1969**. The said Kemunto Onkware transferred her share in the farm to the respondent. The respondent's name was duly reflected in the list of members of Masaba Nyakoigwana Farm. The respondent has since been remitting monies to the officials of Masaba Nyakoigwana for subdivision purposes.
4. The respondent states that the applicant lodged a complaint with the District Commissioner claiming that she was a dependant of Kemunto Onkware. The applicant pestered the respondent who finally agreed to relinquish the suit land to her. An agreement to that effect was reached. The applicant was to refund the respondent **Kshs.650,000/=** within one month. The applicant was however unable to refund him the agreed amount. The respondent received a letter in **March, 2015** from the applicant's advocate asking him to collect **Kshs.280,200/=**. This amount was way below what had been agreed on. He declined to collect the money.
5. I have carefully gone through the documents annexed to the affidavit of the applicant as well as those annexed to the respondent's replying affidavit. Though the applicant did not come out clearly as to what interest she has in the suit land, documents indicate that she is a daughter-in-law of Kemunto Onkware. She was married to **Charles Nyakundi** a son of Kemunto Onkware. The principles of grant of a temporary injunction 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 otherwise the applicant might suffer irreparable 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. *See Giella -vs- Cassman Brown & Co. [1973] EA 358.*

6. In the instant case, the applicant is not stating the interest she has in the suit land. She is merely saying that she has been on the suit land for some time. As I have already said hereinabove, the documents herein show that the applicant was married to the son of Kemunto Onkware who is the beneficial or legal owner of the suit land. The applicant has not shown any document to show that she has any interest in the suit land either as a purchaser or beneficiary. The respondent has annexed to his replying affidavit which shows that he purchased the suit land from Kemunto Onkware. Kemunto Onkware was the allottee of the suit land. She has since sold the suit land to the respondent. Though titles have not been processed, the respondent has been entered in the list of members of Masaba Nyakoigwana Farm. The respondent describes herself as a single lady in her supporting affidavit. She does not say whether she is related to Kemunto Onkware. She does not state on what basis she is claiming the suit land. The applicant's claim that the court found in Kitale HCCC No. 78 of 2012 that Kemunto Onkware was not the owner of the suit land is not true. The court in that case ruled in an application for injunction that the said Kemunto Onkware had not established a prima facie case with probability of success. This is not a finding that Kemunto Onkware was not the legal or beneficial owner of the suit land.
7. The applicant has not demonstrated a prima facie case with probability of success. There is also no loss she is likely to suffer which will not be compensated in damages. I find that her application for injunction orders lacks merit. The same is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this **29th** day of **June, 2015**.

E. OBAGA

JUDGE

In the presence of Mr. Karani for Mr. Wafula for Applicant. Court Clerk - Isabellah.

E. OBAGA

JUDGE

29.6.2015