



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 37 OF 2015

MARTIN NGOMAT PLAINTIFF

VERSUS

DINAH JEPKEMBOI BARTIOL DEFENDANT

R U L I N G

1. The applicant herein filed a notice of motion dated 16th March, 2015 in which he seeks an injunction against the respondent restraining her from interfering with 61 acres out of plot No.5 at ***Ndalala Settlement Scheme***. The respondent is the widow and one of the administratrix of the estate of the late John Kiptum Bartilol who was the owner of ***plot No.5 at Ndalala Settlement Scheme***. The land is 100 acres.
2. On 27.12.2005 the applicant and the respondent entered into a Sale Agreement in which the respondent agreed to sell 50 acres to the Applicant at a consideration of Kshs.4,000,000/=, The applicant had paid ***Kshs.800,000/=*** at the time the agreement was signed. The balance was to be paid on or before 1.3.2006. The applicant took possession of the 50 acres in 2006. This was because the same land had been leased out to a third party a fact the respondent did not disclose at the time of sale.
3. It is apparent that there were disputes regarding the sale as the late ***John Kiptum Bartilol*** had two wives and one of the wives was never involved in the succession cause filed by the respondent. In 2015 the family of John Kiptum Bartilol held a meeting before the local chief where it was agreed that the applicant was to have 25 acres instead of the 50 acres he had purchased. It was also agreed in that meeting that the applicant was to utilize an additional 36 acres for five years to enable him recover ***Kshs.925,000/=*** which he had paid towards the purchase price. This agreement was reached on ***7.3.2015***. This meant that the applicant had 61 acres for his use; 25 acres being the ones he bought and 36 acres being given to him to enable him recover the money he had paid.
4. Soon after the agreement of 7.3.2015, the respondent's son went and ploughed 25 acres of the applicant's land. The applicant had planted sugarcane which the respondent's son uprooted when he ploughed on the 25 acres. This is what prompted the applicant to file this application .
5. The applicant's application is opposed by the respondent through replying affidavit sworn on 10.4.2015 . The respondent contends that the applicant only paid ***Kshs.2,010,000/=*** out of the purchase price of ***Kshs,4,000,000/=***. The applicant was asked to confine himself to 25 acres for which he had paid but he declined and instead cultivated the entire land. The respondent further contends that the entire land has since been leased to one ***Ernest Kipkorir Chepngeny*** and that the agreement reached on 7.3.2015 between the applicant and some family members of the late John Kiptum Bartilol is not binding as it was not entered by any of the Administrators of his estate.

6. The respondent states that she has already filed a case seeking orders of rescission of the agreement of **27.12.2005**, and further that the land in issue is a subject of a succession cause whose grant has not been confirmed.
7. I have carefully gone through the applicant's application together with the supporting affidavit and further affidavit as well as the replying affidavit of the respondent. The principles for 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 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 .
8. In the instant case the applicant has stated that already the son of the respondent has ploughed his 25 acres. The applicant is not clear as to the fate of the 36 acres which he was allegedly allowed to utilize for 5 years to recover **Kshs.925,000/=**. The applicant in his further affidavit has conceded that he has not cleared paying th balance of the purchase price. The respondent in her replying affidavit contends that the entire land has already been leased to a third party. A look at the lease agreement annexed to the respondent's replying affidavit shows that it is 60 acres which were leased out. As I had already said herein-above, the entire plot 5 was 100 acres. The applicant on the other hand in his further affidavit contends that he is on the land and that is why the respondent has filed a suit seeking to evict him.
9. The purpose of a temporary injunction is to preserve the subject matter. An injunction cannot be given if what it is intended to prevent has already happened. The applicant has already lost 25 acres which have been ploughed by the respondent's son. The 36 acres which he was allegedly given on 7.3.2015 were not given by the administrators of the estate of John Kiptum Bartilol.

It is one of the administratrix of the estate who sold him 50 acres. If there was to be any change in the original agreement, then it had to involve the persons who sold the land to him. These are the person who had authority to do so. An agreement cannot be changed by strangers. The applicant is laying claim to 61 acres. The basis of his claim is on the agreement of 7.3.2015 before a chief. In as much as chiefs are obligated to solve some disputes, the disputes must be solved within the confines of the law. The chief is not the administrator of the estate of John Kiptum Bartilol and he had no authority to change the terms of an agreement entered into by the respondent and the applicant. I do not see any **prima facie** case which the applicant has against the respondent based on the agreement of 7.3.2015. Equally I do not see any irreparable loss which the applicant will suffer which will not be compensated in damages. He has already been dispossessed of 25 acres. If he finally succeeds in his claim, this is a matter in which damages can bean adequate remedy. In the premises, I find that the applicant's application lacks merits. The same is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 22nd day of June 2015.

E. OBAGA

JUDGE

The the presence of Mr. Krado for respondent. Court clerk -
Isabellah.

E. OBAGA

JUDGE