



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 107 OF 2015

AUSTINE RICHARD GATHOGO PLAINTIFF

VERSUS

THE CHIEF LAND REGISTRAR TRANS-NZOIA..... 1ST DEFENDANT

CHIEF LAND SURVEYOR TRANS-NZOIA..... 2ND DEFENDANT

RULING

1. The applicant **Austin Richard Gathogo** is one of the three partners who own part of **LR. No. 13420**. The three partners are trading under the name of **Waigama Farm**. The first respondent is the **Land Registrar Trans-Nzoia** whereas the second respondent is the **Surveyor Trans-Nzoia**. The applicant brought a notice of motion dated 24/8/2014 seeking the following orders:-

(1) An injunction restraining the respondents, their proxies, agents, employees, servants, assigns and/or any other person whatsoever from trespassing into, demolishing, erecting illegal structures, fencing, developing, alienating, disposing off, charging, gifting or otherwise dealing in any way with LR.No. 13420 situated in Trans-Nzoia County until the hearing and determination of this suit.

(2) That the Officer Commanding Police Division Kitale do ensure compliance and enforcement of the court order.

(3) That the costs of the application be provided for.

2. The respondents who were duly served with the application neither filed replying affidavit nor grounds of opposition. The application therefore proceeded without any opposition. The applicant contends that he and his two partners held a meeting in 1984 whereby it was agreed that he was to get **129.1 acres**, his partner **Reuben Wairicu** was to get **74.3 acres** and **Erastus Marete** was to get **39 acres**. There were four other individuals who were to get **25, 20, 5 and 5 acres** respectively. They applied for consent of the land control board which consent was duly given authorizing them to subdivide the land into seven portions.

3. Before transfers were signed, one of the partners **Erastus Marete** disappeared without trace hence the reason why the title is still in the names of the three partners. Survey was carried out and deed plans were prepared and registered. In July, 2015 the respondents moved to the land which is **297.3 acres** and started carrying out fresh survey. As a result of the actions of the respondents, some unknown persons have moved into the property and have erected structures on the same. This is why the applicant is seeking an injunction to be enforced by the OCPD Kitale.

4. I have gone through the applicant's application together with its annexures. I must now decide whether the applicant has made out a case for grant of a temporary injunction. The principles for grant of temporary injunction are now settled. First an applicant must demonstrate that he has a prima facie case with probability of success. Secondly an injunction will not normally be granted 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.
5. In the instant case, the applicant is contending that the respondents are subdividing the land and giving it to unknown persons. It is not clear on what basis this subdivision is being carried out or who the beneficiaries are. However what is clear is that some people are already on the property and have erected structures on the same. A look at the documents filed in this case show that two individuals namely **Francis Mudida** and **Nina Mudida** have had **10.11 hectares** which is about **25 acres** transferred to them as joint tenants. The transfer was effected on **20/12/1990**. It is therefore clear from this transaction that the applicant and his fellow partners are not the owners of the whole 297.3 acres. There are other non partners who also have a stake in the land at least as per the applicant's own affidavit.
6. The applicant has not been specific as to what kind of survey the respondents are carrying out or on which portion they are doing so. I have already indicated that Francis Mudida and Nina Mudida have 25 acres. It is not known whether the surveyors were carrying out survey on this portion or not. I have already said hereinabove that there are people already on the property. It is not known how they came into the property. The individuals are not named. It is common knowledge that the respondents are Government officers attached to various counties. Their work is to carry out survey and registration of parcels of land upon request to do so. They never sell or charge or build on private property. The way this application is couched is that it is intended to affect some unnamed persons who are conveniently called agents of the respondents. I do not see any prima facie case against the respondents. This application is actually targeting persons other than the two respondents. That is why the applicant is seeking assistance of police to enforce any order which will be given.
7. An injunction will only be given to preserve the property in issue. The applicant has given generalized allegations that some people are being given their land without saying who these persons are. There is nothing to show that anything is being demolished on the property or that any illegal structures are coming up. Any injunction given in the circumstances will not be justified. I therefore find that this application cannot be allowed. The same is hereby dismissed with no orders as to costs.

It is so ordered.

Dated, signed and delivered at Kitale on this **12th** day of **October, 2015**.

E. OBAGA

JUDGE

COURT

At 2.40 pm. No appearance.

Ruling signed in the absence of Applicant's lawyers who were aware of today's date.

Court Assistant – Winnie

E. OBAGA

JUDGE

12/10/2015