



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 118 OF 2013

VINCENT N. KROP & 3 OTHERS.....PLAINTIFFS

VERSUS

MARTIN S. LIMAKOU & 12 OTHERS.....DEFENDANTS

RULING

1. The applicants are the registered owners of land Parcel No. West Pokot/Chepareria/716. They have brought a notice of motion dated 17th September, 2013 in which they seek the following orders;-

1. A temporary injunction restraining the defendants/Respondents, their servants, agents and/or anybody purporting to act for them or through them from trespassing upon or committing any acts upon the plaintiffs/applicants parcel of land known as LR NO. West Pokot/Chepareria/716 measuring 69.37 Hectares pending the hearing and determination of the main suit.

2. That the OCS Kapenguria Police Station do supervise compliance with the court's order.

3. That costs of this application be provided for.

2. The applicants were registered as proprietors of the land following the demise of Batholomeo Nariso Mungano who died on 20/4/2011. From the documents filed in support of the applicant's application, the suit land has been having a long standing dispute pitting the family of the respondents against the family of the applicants.

3. The respondents lost their claim to the land when their appeal to the Minister under the Land Adjudication Act was dismissed on 5/4/2012. The respondents had also lost their bid in the High Court to stop the District Commissioner from going ahead to hear the appeal to the Minister.

4. The applicants contend that since they are the registered owners of the land the respondents should be restrained by way of temporary injunction from wasting or in any way interfering with the suit land.

5. The applicants contend that the respondents have put up structures on the land and that they continue to graze their animals on the land yet it is not their property.

6. The respondents have opposed the application through a replying affidavit sworn by the 10th respondent Joseph P. Lopotio who has authority of the other respondents.

7. The respondents contend that they have been in occupation of the suit land for over twelve years and

that they have therefore acquired proprietary rights over the land and as such, if the injunction is issued it will in effect amount to granting a mandatory injunction which will result in their eviction. They contend that the purpose of a temporary injunction is to preserve the status quo rather than disturb it.

8. I have considered the applicants application as well as the opposition by the respondents. There is no doubt that the applicants are the registered owners of the suit land. The issue which arises for determination is whether the applicants are entitled to the orders they are seeking.

9. Whereas the respondents appear to concede that they have no title to the land, they contend that by virtue of their stay on the land, they have acquired proprietary rights and that an injunction if granted will mean that they will be evicted from the land.

10. The principles for grant of injunction be it a temporary one or mandatory one are now well settled. The applicants have moved the court under the provisions of order 40 Rules 1, 2, 3 and sections 3, 3A and 63 (c) and (e) of the Civil Procedure Act. The sections of the Civil Procedure Act cited give the court discretion to make any interlocutory orders as may appear to the court to be just and convenient. The heading to order 40 reads "Temporary injunctions and interlocutory orders".

11. The respondents have been fighting for the land until 5/4/2012 when they lost their claim to it as provided for under the Land adjudication Act. I do not think that their contention that they have been on the land for over 12 years can be a defence to the applicants claim.

12. The Plaintiff/Applicants claim is one which can be remedied in a summary manner. It therefore follows that the applicants application can be granted even if the same will amount to a mandatory injunction. The applicants have demonstrated that they have a strong case with a probability of success. The respondents should not be let to continue interfering with the applicants land merely on the pretext that they have been in possession of it. The respondents might even start selling portions of the land. The applicants have to be protected from this.

13. I find that the applicant's application is merited. The same is allowed in terms of prayer 3, 4 And 5 of the motion.

It is so ordered.

Dated, signed and delivered at Kitale on this 30th day of July, 2014.

E. OBAGA,

JUDGE

COURT: Ruling read in the absence of parties. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

30/7/2014