



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
LAND CASE NO. 101 OF 2014

DICKSON KIPSEREM TANUI.....PLAINTIFF

VERSUS

1. ANNE KETER

2. ABRAHAM RUTTO.....DEFENDANTS

RULING

1. The applicant is the administrator of the estate of the late John Kiptanui Mutai who died on 28/11/1992. The deceased was a member of Kapcheplanget Co-operative Society and was entitled to 16.43 hectares. The society's land had been subdivided and an area list duly submitted to the lands office after survey was carried out. The deceased died before he could collect his title from the lands office.
2. The applicant has filed a notice of motion dated 17th June, 2014 in which he seeks orders of temporary injunction restraining the defendant/Respondents, their agents, servants, assigns and/or any other person acting on their behalf from entering into developing, cultivating, leasing, selling or dealing in any manner with LR NO Kibuswa/Kapcheplanget/55.
3. The respondents were duly served but they did not file any grounds of opposition or replying affidavit. The applicant contends that on 19/4/2014 the respondents moved into the suit property and started erecting semi permanent structures on the property. The applicant contends that when he asked the respondents why they were constructing on property which is not theirs, they told him that they were doing so on instructions of undisclosed third parties. The respondents even prevented him from spraying the maize he had planted on the suit land.
4. I have considered the applicant's application. The principles for grant of a temporary injunction are now well known. 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 otherwise the applicant might suffer injury 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 present case the applicant has demonstrated that the property belonged to his late father.

The applicant is the administrator of the estate of his father. A certified copy of the area list was annexed to his supporting affidavit. This list shows that his father was No. 55 on the list and that he was entitled to 16.43 hectares. What the deceased had not done was to process the title. Otherwise the process of subdivision of the society's land had been completed. The land therefore belonged to his late father.

6. The respondents have erected semi permanent structures on the land. These structures are not complete. The respondents did not file any replying affidavit to counter the applicant's contentions. I find that the applicant has demonstrated that he has a prima facie case with probability of success. In the circumstances of this case, I do not have to consider the two other principles for grant of injunctions.
7. I find that the applicant's application is well founded. The same is allowed in terms of prayer (3) and (4).

It is so ordered.

Dated, signed and delivered at Kitale on this 28th day of July, 2014.

E. OBAGA

JUDGE

COURT: Ruling delivered at 9.38 a.m. in the absence of applicant's lawyer who was aware of today's date. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

28/07/2014