



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 83 OF 2014

PATRICK WAKOLI SICHANGI.....1ST PLAINTIFF

FRED MZEE NYONGESA.....2ND PLAINTIFF

VERSUS

PATRICK MAKOKHA BYNYOLI.....1ST DEFENDANT

JOSEPH BARASA.....2ND DEFENDANT

BENARD MUKHWANA.....3RD DEFENDANT

R U L I N G

1. The applicants brought a notice of motion dated 16th May, 2014 in which they seek an injunction restraining the defendant/Respondents by themselves, their agents and or their servants or anyone claiming through them from trespassing, entering, constructing, alienating or in any way interfering with applicants use of land Parcel No. Waitaluk/Kapkoi Block 12 (Chamgei)/220 pending hearing and determination of this suit.

2. The applicants are joint owners of the suit land. The suit land was bought from the 1st and 2nd defendant/Respondents. The 3rd defendant/Respondent is said to have witnessed the sale agreement between the applicants and the respondents. The applicants contend that on 16/3/2014 the respondents descended on the suit property, removed a fence and erected their own fence thus interfering with the access road leading to the applicant's land. The applicants are therefore praying for injunctive orders restraining the respondents from what they are doing.

3. The application is opposed by the respondents through replying affidavit sworn by the first respondent. The respondents contend that it is the applicants who have interfered with the boundary and the road of access by creating their own access road. The respondents also contend that the applicants have increased the acreage of their land and that it is necessary for a surveyor to go to the ground to rectify the position.

4. I have gone through the applicant's application as well as the opposition to the same. I have also looked at the pleadings in this case. It is apparent that the parties herein are wrangling over boundaries to their respective parcels. The applicants are contending that the respondents have encroached into their land by 0.9 of an acre. This is according to the submissions by the first applicant. The issue which emerges for determination is whether the applicants have demonstrated that they have a prima facie case to warrant issuance of orders of injunction.

5. As I have said hereinabove, the applicants as well as the respondents are wrangling over boundary dispute. There is no evidence put forth by either party to support their allegations. Both parties are agreed that there is need to send a surveyor to the ground to ascertain the true position. In the circumstances it cannot be said that the applicants have demonstrated that they have a prima facie case with probability of success.

6. On whether the applicants will suffer injury which may not be compensated in damages, it is my finding that what the applicants will suffer i.e removal of their fence and alleged encroachment is quantifiable and can be remedied in damages should the applicants succeed in their claim.

7. I am not in doubt as to the matter herein and therefore there is no need to consider the balance of convenience. I find that the applicants' application is not well founded. The same is hereby dismissed with costs to the respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this 29th day of July, 2014.

E. OBAGA

JUDGE

In the presence of the applicant in person and Mr Ingosi for Mr Mwinamo for respondent. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

30/7/2014