

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 81 OF 2013

SELLY JEPCHUMBA RUTTO PLAINTIFF

VERSUS

KENETH K. SUTER DEFENDANT

R U L I N G

1. The applicant filed a notice of motion dated 6/3/2014 in which she seeks an order of injunction restraining the respondent by himself, his agents, servants from ploughing, making preparations for crop planting or any other dealings in whatsoever manner with plot No. 671 at Trans-Nzoia settlement scheme. The applicant contends that she is the registered owner of the suit land.
2. In the year 2001 she entered into both written and oral agreements for sale of her interest in the suit land to the defendant/Respondent. She contends that the agreement between her and the respondent was breached by the respondent and that she rescinded the same. She contends that the respondent has without her authority ploughed the suit land and wants to plant without her authority. It is on this basis that she seeks injunction orders against the respondent.
3. The application is opposed by the respondent based on a replying affidavit sworn on 9th May, 2014 and filed in court on 12th May, 2014. The respondent contends that he bought the suit land from the applicant and fully paid for it. He took possession and has been utilising it for 14 years now. The respondent denies breaching the agreement between him and the applicant. The applicant contends that the application is brought in bad faith and that it is the applicant who wants to rescind the agreement between him and the applicant.
4. I have considered the applicant's application as well as the replying affidavit by the respondent. The applicant is seeking orders of eviction against the respondent in the main suit on account of breach of sale agreement. In the instant application she is seeking an injunction restraining the respondent from planting on the suit land. The principles for grant of injunctions are well known. First an applicant has to show that he has a prima facie case with probability of success. Secondly an injunction will not normally be granted unless the applicant will suffer irreparable loss which might 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 application, the applicant has not annexed any document to show that she is the registered owner of the suit land. She has also not annexed any document to show that she rescinded the agreement between her and the respondent. In the circumstances it is difficult to figure out whether she has any prima facie case against the defendant/Respondent.
6. The respondent has been in possession of the suit land since 2001. He has made extensive developments on the land. The applicant is seeking to injunct the respondent after 13 years of continuous stay on the land. The applicant has not indicated in her pleadings or in the application when she rescinded the contract. She will not suffer damage which will not be compensatable in damages.
7. The applicant was seeking to stop the respondent from planting. The respondent has already

planted. The purpose of an injunction is to preserve the subject matter. It will be an exercise in futility to stop what has already taken place. Even if the applicant finally succeeds in her suit, she will be adequately compensated in damages if at all she will prove that she has suffered any. I find that the applicant's application has no merits. The same is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 21st day of July, 2014.

E. OBAGA

JUDGE

In the presence of Mr Chebii for the respondent. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

21/7/2014