



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 65 OF 2014

GEORGE K. CHESEBE PLAINTIFF

VERSUS

RONALD MUSHUKA CHESEBE..... DEFENDANT

R U L I N G

1. The applicant filed a notice of motion dated 7/4/2014 in which he seeks the following reliefs;-
 - (a) *A Permanent injunction restraining the defendant by himself, his agents, employees, servants and or otherwise from entering, trespassing, remaining or, tampering and/or encroaching on the applicant's four acres of land comprised in plot No. 200 Sukwo Farm measuring 6 ½ acres.*
 - (b) *That the Honourable court be pleased to order the Officer Commanding Saboti Police Station to ensure enforcement of the orders.*
 - (c) *Costs of the application.*
2. The application is supported by the supporting affidavit sworn by the applicant on 7/4/2014. The applicant who is a step brother of the respondent contends that his father had two wives. The applicant's father who has since died owned a 13 acre parcel of land. A dispute was filed at the Saboti Land Disputes Tribunal regarding the land. The Tribunal ruled that each wife of the applicant's deceased father was entitled to 6 ½ acres.
3. The verdict of the Tribunal was adopted as Judgement of the court vide Kitale Chief Magistrate's Land Case No. 113 of 2008. The applicant contends that a decree was extracted and a surveyor was sent to the ground and sub-divided the land into two equal portions of 6 ½ acres. The applicant contends that he utilised the 6 ½ acres for only four months after which the respondent forcefully moved in and took 4 acres. The respondent has since put up a semi permanent house. The applicant's efforts to have the respondent move out of the 4 acres has failed hence the filing of this application.
4. The application is opposed by the respondent through a replying affidavit sworn on 14/6/2014. The respondent contends that there was no survey carried out as alleged. The respondent further contends that the prayers sought cannot be granted at this stage for to do so will be determining the entire suit at interlocutory stage.
5. The respondent also contends that there is no evidence shown by the applicant to confirm that

a survey was carried out. The respondent contends that the said land was purchased by his late brother Bonventure Chesebe. The respondent further contends that the applicant has not been candid in his application. That the applicant is residing on a 5 acre piece of land after he sold one acre to one Joseph Cheptangat and has leased out part of the land to two other people.

6. I have gone through the applicant's application which appears to have been drafted in a hurry. The Advocate who drafted it is seeking an injunction against the plaintiff his client. However be that as it may, it is clear that that was a typing error. The prayers which the applicant is seeking at interlocutory stage are the same prayers he is seeking in the main suit. The same cannot be granted at this stage as to do so will amount to giving mandatory injunction when no special circumstances have been shown to warrant the court to give the same.
7. The applicant has not been candid in his application. He contends that there was no Judicial Review application filed in the High Court when the truth is that there was such an application for Judicial Review filed. Orders were given that leave was to operate as stay of the decree of the lower court. Those orders are still in force and have never been vacated. It is therefore not true that no Judicial Review application was filed. The applicant's Advocate submitted that no Judicial Review was filed when he knew that this was not the case. If any survey was done as alleged which I doubt in view of the fact that no such evidence was put forward by the applicant, then the same was contrary to the High Court order staying the decree of the lower court. I find that there is no merit in the applicant's application. The same is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 14th day of July, 2014.

E. OBAGA

JUDGE

In the presence of Mr Esikuri for defendant for defendant/respondent and the applicant in person. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

14/07/2014