



**Masinde v Munyasia (Environment & Land Case (OS) E011 of 2022)
[2023] KEELC 15926 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15926 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE (OS) E011 OF 2022
EC CHERONO, J
FEBRUARY 23, 2023**

BETWEEN

CHARLES MASINDE APPLICANT

AND

VINCENT MAKOKHA MUNYASIA RESPONDENT

RULING

1. This Ruling arises from a Notice of Motion application brought under certificate of Urgency dated November 23, 2022 in which the applicant is seeking the following orders;
 - a. (Spent)
 - b. It pleases the Honourable Court to place a restriction on parcel No Bokoli/Kituni/114 restricting any dealings pending interpartes hearing of this application
 - c. That there be a restriction on any dealings, transfer or alienation of the suit land parcel No Bokoli/Kituni/114 pending hearing and determination of this suit.
 - d. Costs be provided for.
2. The application is based on grounds apparent on the face of the said application and the affidavit of the applicant sworn the same date as well as annexures thereto.
3. According to the applicant, the respondent approached him sometime between the year 1997 and 1998 with intend to sell him his farm measuring 4 acres at Malaa being LR No Bokoli/Kituni/114. He stated that he agreed to buy the same verbally at a price of Kshs 270,000/= and made a down payment and completed the balance of the purchase price in the year 2000. He further stated that he was given vacant possession and that he has remained in quiet and peaceful occupation for well over 35 years.



4. He stated that some time October 2022, he found some people walking around the suit land and after inquiring what they were doing, they told him that the respondent had secretly asked them to purchase the land.
5. The applicant also stated that since they were close with the respondent, they never entered any formal agreement but he just agreed to sell and he accepted to buy the suit land at a purchase price of Kshs 270,000/=
6. The application is opposed by the respondent vide a Replying affidavit sworn on December 9, 2022. In his averments, the respondent contends that he is the one in actual possession of the suit land parcel No Bokoli/Kituni/114 where he has put up a house and planted grown eucalyptus trees. The respondent further stated that he has permitted one Rose Masinde, the wife of his cousin one Richard Masinde to grow maize and beans on a portion of the suit land since 2015. He said that he has never entered into any negotiation to sell the applicant the suit land nor has he received any single cent from the applicant as purchase price for the suit property. He avers that the applicant has never stepped on the suit land either by actual or constructive means and that the applicant has not established a prima facie case to warrant the grant of the orders sought. In conclusion, the respondent argued that the balance of convenience tilts in his favour as the absolute owner of the suit property and that the application ought to be dismissed for being frivolous, vexatious and scandalous.

Analysis and Determination

7. I have considered the Notice of Motion application brought under certificate of urgency dated November 23, 2022. I have also considered the supporting affidavit and the annexures thereto as well as the Replying affidavit by the Respondent. It is now well settled that before granting a temporary order which is an equitable relief, the court must be satisfied that the applicant has established the following three grounds;
 1. *A prima facie* case with high chances of success at the main trial
 2. Will suffer irreparable injury which cannot be compensated by an award of damages, and
 3. Where the court is in doubt, it may decide the matter on a balance of convenience.
8. The applicant has deposed in his supporting Affidavit that they were close with the registered proprietor, the respondent herein who approached him to purchase a portion of his land parcel No Bokoli/Kituni/114 Measuring approximately nine and a half acres. He further deposed that they never entered any formal agreement but just agreed at Kshs 270,000/. Since the applicant has no certificate of title as a prima facie evidence of ownership, I find that he has failed the first test
9. Regarding the second ground, the applicant has not also deposed that he will suffer irreparable injury which cannot be compensated by damages unless the application is granted.
10. Deciding this application on the third ground, I find that the balance of convenience tilts in disallowing the application.
11. For all the reasons given hereinabove, I find the notice of motion application dated November 23, 2022 lacking merit and the same is hereby dismissed with costs
12. Orders accordingly.

READ, DELIVERED AND SIGNED IN THE OPEN COURT AT BUNGOMA THIS 23RD FEBRUARY, 2023.



HON. E.C CHERONO

ELC JUDGE

In the presence of;

Mr Waswa holding brief Sichangi for Applicant

Respondent /Advocate - absent

