



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 141 OF 2014

TIMOTHEO KUTETE CHETAMBE

PLAINTIFF

VERSUS

WYCLIFFE WAKOLI SIMIYU

JULIUS

AMUKA.....

DEFENDANT

R U L I N G

1. The applicant filed a notice of motion dated 5/9/2014 in which he seeks an injunction against the respondents restraining them from interfering with unsurveyed residential plot No. "C" Block 7 Kitale Municipality (Suit land).The applicant contends that he was allocated the suit land on 12/7/1998 by the commissioner of lands. That he immediately took possession and has been in possession uninterrupted for a period of over 17 years. The applicant further contends that he has been paying all rates. On 2/9/2014, the second respondent moved to the suit land and demolished his fence. On 3/9/2014 the first respondent moved into the suit land and started constructing a temporary structure on it under the supervision of the second respondent.
2. The applicant contends that the respondents have never claimed the suit land since 1998 when he took possession until September, 2014 when they started claiming ownership. It is on this basis that he is claiming injunction orders against the respondents.
3. The application is opposed by the respondents through replying affidavit sworn on 8/10/2014 and filed in court on 9/10/2014. The first respondent contends that the documents annexed to the applicant's affidavit are all fake and that the suit land was actually allocated to him on 8/11/1994. The first respondent further contends that the applicant never paid the amounts required in the purported letter of allotment and that the part development plan annexed to the applicant's affidavit is a photocopy of a part development plan prepared in his favour on 12/8/1994.
4. The first respondent has also taken issue with various documents attached to the applicant's application for instance that a clearance letter was issued before a rates demand was issued and that the Block number for the suit land is altered on the demand for payment of rates.The first respondent contends that a house he had put up on the suit land was broken into and his properties stolen from it.

Three people were arrested in connection with the theft and demolition and that they revealed that they were sent by the applicant. They promised to rebuild his structure in favour of not being prosecuted.

5. I have carefully considered the applicant's application as well as the opposition to the same by the respondents. The principles for grant of interlocutory injunctions are now well settled. 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 the applicant will otherwise suffer irreparable injury. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.

6. In the present case the applicant has not demonstrated that he has a prima facie case with probability of success. The applicant claims that he was allocated the suit land by the commissioner of lands on 12/7/1998. He annexed a copy of the letter of allotment which had conditions to be fulfilled. The applicant did not annex any document to show that he met any of those requirements. A letter of allotment is as good as nothing if the allottee does not meet any of the conditions in the letter. The applicant has annexed a clearance certificate issued on 22/2/2013 by municipal council of Kitale. This clearance letter is doubtful because the applicant has also annexed a demand for rates dated 28/2/2013 for Kshs.31,000/=. It will not have been possible for the applicant to be issued with a clearance letter before he paid rates. There was no receipt to show that he ever paid the Kshs. 31,000/= demanded and it is not possible that he paid the rates on or before 22/2/2013 yet a demand for rates issued thereafter shows that he owed the municipality Kshs. 31,000/= as at 28/2/2013.

7. The first respondent has demonstrated that he was allotted the suit land earlier than the applicant. This is at least according to the documents annexed to his replying affidavit. He has been paying rates and met some of the conditions on the allotment letter. The applicant in his further affidavit filed on 11/10/2014 contends that the first respondent may be confusing his plot with that one of his. There is no confusion as to the plot in issue. The part development plan annexed by both the applicant and first respondent shows that they are a replice of each other. The position of the plot is the same. There is therefore no issue of confusion as to the plot in issue.

8. Since the applicant has not demonstrated that he has a prima facie case with probability of success, I now consider whether he will suffer irreparable injury. Both the applicant and first respondent have allotment letters. No lease has been prepared and issued to either of them. The first respondent has only put up a temporary structure on the suit land. He said that this structure has been in place since 2011 when he was allowed to put it up by the municipal Council of Kitale. There is no permanent structure being put up. I do not therefore see which irreparable loss the applicant will suffer if an injunction is not granted. As at August, 2014, the first respondent had sworn an affidavit that his structure which lay on the suit land had been broken into and his belongings stolen. This affidavit was commissioned by Mr Katama Ngeywa who is now acting for the applicant. The first respondent has exhibited a receipt which was issued to him in 2011 allowing him to put up a temporary structure on the land. It cannot therefore be said that the structure was put up in September, 2014.

9. There are two allotment letters in respect of the same parcel of land. Each allottee is claiming that his allotment is the genuine one. It will therefore be impossible at the moment to state which of the documents are genuine and which ones are not genuine. This application must therefore be decided on the balance of convenience. The balance of convenience tilts in favour of the first respondent who has demonstrated that he has been in occupation of the suit land and had even a structure on it. It therefore follows that the applicant's application will not succeed. The same is hereby dismissed with costs to the respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this 9th day of December, 2014.

E. OBAGA

JUDGE



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