



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE E040 OF 2021**

**HELLEN TALA KIPTOO (Suing as the Administrator of the**

**Estate of the late JAPHETH KIPTOO CHEBIEGON.....PLAINTIFF**

**VERSUS**

**JEREMIAH YATICH (Sued as the Administrator of the Estate of the late**

**JOSHUA YATICH CHEPYEGON).....1<sup>ST</sup> DEFENDANT**

**JOSEPH TOROITICH KANGOGO**

**(Sued as the administrator of the Estate of Kangogo Arap Chepyegon (Deceased)-.....2<sup>nd</sup> DEFENDANT**

**RULING**

1. This is a ruling in respect of a Notice of Motion dated 22<sup>nd</sup> June 2021 in which the Plaintiff /Applicant seeks the following orders:-

**(a) Spent**

**(b) Spent**

**(c) That the Honourable court be pleased to issue a temporary order of injunction restraining the Defendant/Respondent, whether by himself, his servants, agents, or any person whomsoever from evicting, demolishing the Plaintiff/Applicant house selling, leasing, charging or otherwise however interfering with the Plaintiff/Applicant's quiet, peaceful, actual and exclusive possession, cultivation, user and enjoyment of those parcels of land known as BARINGO/SERGONJUN/230 and BARINGO/SERGONJUN/240 pending the hearing and determination of the main suit.**

**(d) Costs of this application be for.**

2. The suit properties that is Baringo/Sergonjun/230 and 240 are registered in the names of Kipkosgei Chebeigon and Kangogo Arap Chebyegon respectively who are both deceased.

3. The Applicant who is the administrator of the estate of the late Japhet Kiptoo Chebiegon contends that the estate of the late Japhet Kiptoo Chebiegon had been in occupation of the suit properties since 1962. The late Japhet Kiptoo Chebiegon had put up a posho mill, saw mill, rental houses on Baringo/Sergonjun/240 and had put up his house on Baringo/Sergonjun/230.

4. The late Japhet Kiptoo Chebeigon died on 21/1/2002 and was interred on Baringo/Sergonjun/240. The Applicant contends that the 1<sup>st</sup> Defendant/Respondent has verbally threatened to evict her from the suit property without any court order and has actually started demolishing structures which are on an adjacent land and the estate of the late Japhet Kiptoo Chebiegon have been in occupation of the suit properties for over 29 years after the same were registered in the names of the late Kipkosgei Chebiegon and that if she were to be evicted, she has nowhere to move to. This is why she is praying for injunctive orders against the 1<sup>st</sup> Respondent.

5. The Applicant's application has been opposed by the 1<sup>st</sup> Respondent based on a Replying Affidavit sworn on 23/7/2021. The 1<sup>st</sup> Respondent contends that the Applicant's application is an abuse of the process of the court and that the applicant is not being truthful. The 1<sup>st</sup> Respondent states that the posho mill and saw mill which are on Baringo/Sergonjun/240 are being run by two families who maintain a joint account in which the proceeds from the two enterprises are deposited and that no decision has been made to pull down any structures hosting the two enterprises.

6. The 1<sup>st</sup> Respondent contends that the houses belonging to Japhet Kiptoo Chebiegon are on Baringo/Sergonjun/255 and not on Baringo/Sergonjun/230 or 240 as claimed by the Applicant. The 1<sup>st</sup> Respondent further states that the remains of the late Japhet Kiptoo Chebeigon were interred on Baringo/Sergonjun/255 and that he has been in occupation of Baringo/Sergonjun/229 and has no interest in either Baringo/Sergonjun/230 or 240.
7. I have carefully considered the Applicant's application as well as the opposition to the same by the 1<sup>st</sup> Respondent. I have also considered the submissions by the parties. The only issue for determination is whether the Applicant has demonstrated that he has a *prima facie* case with probability of success to warrant grant of an injunction.
8. The suit properties are not registered in the name of the 1<sup>st</sup> Respondent. The directions as to the filing of written submissions were given on 26/7/2021. The Plaintiff was amended on 12/8/2021 and brought in the administrator of the estate of Kangogo Arap Chepyegon who is the registered owner of Baringo/Sergonjun/240. There is no evidence that this application or pleadings were served upon the 2<sup>nd</sup> Respondent.
9. The 1<sup>st</sup> Respondent had filed ELC No. 289 of 2017 against Enoch Kiptum. This suit was consolidated with ELC 288 of 2017 where the 1<sup>st</sup> Respondent was the Plaintiff, and the suit was against four defendants. The 1<sup>st</sup> Respondent was given an eviction order against the Defendants in both suits.
10. The Applicant claims that the estate of the late Japhet Kiptoo Chebiegon was not a party to the suit in which the Applicant was granted orders of eviction and as such she should not be evicted. It is not clear on what basis the 1<sup>st</sup> Respondent was granted eviction orders in respect of Baringo/Sergonjun/240. The Applicant has too not come out clear on what basis she sued the estate of Kangogo Arap Chepyegon who is the registered owner of Baringo/Sergonjun/240 yet the 1<sup>st</sup> Respondent had obtained eviction orders in respect of LR. Baringo/Sergonjun/240.
11. An injunction is an equitable remedy and whoever desires the court to grant orders must approach the court with clean hands and make full disclosure. As matters stand, neither the Applicant nor the 1<sup>st</sup> Respondent are being candid on how they came to occupy the suit property. The 1<sup>st</sup> Respondent claims that he has no interest in either Baringo/Sergonjun/230 or 240, yet he says that the business on Baringo/Sergonjun/240 is being run jointly by two families who have a joint account where the profits from the business are deposited.
12. It is therefore clear that the Applicant has not demonstrated that she has a *prima facie* case with probability of success. The Applicant has also failed to demonstrate that she will suffer loss which will not be compensated in damages. The balance of convenience tilts in favour of the 1<sup>st</sup> Respondent who has a judgement in his favour in respect of LR No. Baringo/Sergonjun/240.
13. From the above analysis, it is clear that the Applicant's application lacks merit. The same is hereby dismissed with costs to the 1<sup>st</sup> Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 27TH DAY OF JANUARY 2022.**

**E. OBAGA**

**JUDGE**

**27/1/2022**

**IN THE VIRTUAL PRESENCE OF:**

**MR. MATHAI FOR PLAINTIFF/APPLICANT**

**MS. BORNES FOR DEFENDANT/RESPONDENT**

**COURT ASSISTANT – MERCY**

**E. OBAGA**

**JUDGE**

**27/1/2022**