

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT ELDORET

E & L NO. 550 OF 2013

PAUL KIPCHUMBA SEREM ::::::::::: PLAINTIFF

=VERSUS=

WILLIAM CHEPKWONY ::::::::::: RESPONDENT

(APPLICATION FOR INJUNCTION; APPLICATION NOT OPPOSED; APPLICATION ALLOWED)

RULING

The application before me is that dated 18 December 2013. The plaintiff wants the defendant restrained from selling, alienating, disposing and/or ploughing and/or doing anything on the land parcel LR No. 8304 which is contrary to the quiet enjoyment of the land by the plaintiff until this suit is determined. Despite being served with the application and the suit papers, the defendant has not yet entered appearance and neither has he filed any response to the plaintiff's application.

Essentially, what the plaintiff wants is an injunction against the defendant. To succeed, the plaintiff has to demonstrate a *prima facie* case with a probability of success. If the court is in doubt, it will decide the matter on a balance of convenience keeping in mind that an injunction will not normally be issued unless damages are going to be inadequate remedy in compensating the applicant for any loss. These principles were set out in the case of *Giella v Cassman Brown (1973) EA 358*.

The case of the plaintiff is that he purchased 10 acres of the suit land on 21st January 1997 at a consideration of Kshs. 200,000/= from one **Philip Kipkurgat Kogo**, who is not a party to this suit. A copy of the sale agreement is attached to the supporting affidavit. The plaintiff has averred that recently, the defendant, who is the plaintiff's brother, has been looking for a purchaser to buy the plaintiff's 10 acres of land. It is also averred that the defendant has been using the police to harass and intimidate him over the 10 acres and that he is unable to have quiet and peaceful occupation of the property. It is claimed that the defendant wants to unlawfully wrestle the land from the plaintiff and that he has unlawfully proceeded to plough the land. It is for this reason that the plaintiff wants the defendant restrained from interfering with the suit land until the suit is determined.

The only material before me is that supplied by the plaintiff. I have seen the agreement of 21st January 1997 in which the plaintiff bought the suit land. *Prima facie* therefore, the land belongs to the plaintiff. The defendant has not responded to the application to state why he thinks he is entitled to possess the suit land. In the premises, I see no reason why I should deny the plaintiff the injunction sought.

I therefore allow the application. I restrain the defendant and/or his servants/agents from offering for sale, leasing, entering, remaining upon, ploughing, or in any way dealing with the suit land in a manner that is contrary to the proprietary rights of the plaintiff pending the hearing of this suit. The costs of the application shall be costs in the cause.

It is so ordered.

DATED AND DELIVERED THIS 7TH DAY OF JANUARY 2014.

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT

AT ELDORET.

Delivered in open court in the presence of :-

Mr. A.M. Ngigi holding brief for Mr. Kiboi for the plaintiff/applicant.

N/A for defendant.