



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

ENVIRONMENT AND LAND COURT NO. 25 OF 2014

ESTHER BEDFORD PIM PLAINTIFF

VERSUS

DAVID KIPKOECH KOGO DEFENDANT

RULING

1. The applicant Esther Bedford Pim is mother of the respondent David Kipkoech Kogo. The applicant brought a notice of motion dated 12/2/2014 in which she seek injunction orders restraining the respondent whether by himself, his servants and or agents from ploughing, planting, trespassing or in any other way dealing in LR Nos. 6133 and 6150 in such manner as to defeat the applicant's interest thereon.
2. The applicant is the registered owner of the two parcels of land which were transferred to her by her late husband Francis Bedford Pim before his demise. The applicant allowed the respondent to work on about 200 acres and put up a temporary structure. The respondent has been cultivating the said acres until the time the applicant decided to sub divide her parcels of land. The applicant designated 70 acres to be used by the respondent
3. There were some disagreements between the applicant and the respondent over the applicant's move but according to the applicant, the respondent agreed to move out of the rest of the land and confine himself to the 70 acres given to him. The respondent however reneged on the agreement and went and started ploughing 131 acres in addition to the 70 acres given to him. It is for this reason that the applicant is seeking an injunction restraining the respondent from cultivating the 131 acres.
4. The respondent has opposed the application based on his replying affidavit sworn on 25/2/2014. The respondent contends that he has been cultivating the suit land since the 1980's and that the applicant only chased him from the land in 2012 in favour of her sister Mrs Cecilia Bedford Kirui. That he sought the intervention of the commission on Administrative Justice who ordered his return to the land. That on intervention of commission on Administrative Justice 200 acres were surrendered to him.
5. The respondent contends that he has already planted on the disputed portion and that therefore the injunction sought cannot be granted. The respondent has annexed copies of photographs showing maize growing on what he calls the disputed land. The photographs were allegedly taken on 15/2/2014. the applicant has countered this contention arguing that no maize could have been planted in the month of February which is a dry month.
6. I have carefully gone through the applicant's application as well as the replying affidavit. I must now decide whether the injunction sought should be issued. The principles for grant of injunction are now well settled one of the principles is that an applicant must demonstrate that he has a prima facie case with a probability of success. In the present case, the applicant has demonstrated that she is the registered owner of the two parcels of land.
7. The applicant has subdivided the land and has already given the respondent 70 acres. The

respondent is insisting on cultivating about 200 acres more. In his replying affidavit, the respondent has annexed a copy of his father's will. This will does not relate to the properties in issue and in any case the properties were transferred before the respondent's father died. They therefore do not form part of the estate of the deceased.

8. The respondent is claiming compensation from his mother. I do not understand the basis of the compensation. If this is the case, this is an indirect admission on his part that he is no longer interested in the disputed portion. The respondent annexed photographs to his replying affidavit showing that he has maize which is about a month old. These photographs were taken on 15/2/2014. This therefore means that planting must have been done in the month of January. This is not possible because January is a very dry month in Trans- Nzoia and planting season does not occur in January.
9. The respondent has been given his portion of land. He has no business dictating to his mother on how much he should be given. I find that the plaintiff has demonstrated that she has a prima facie case with probability of success. Her application is allowed as per the notice of motion dated 12/2/2014. The injunction shall last until the hearing and determination of this case

It is so ordered.

Dated, signed and delivered at Kitale on this 3rd day of April, 2014.

E. OBAGA,

JUDGE

In the presence of Mr Yano for applicant and Mr Mokuu for Mr Kiboi for respondent. Court clerk – Emily.

E. OBAGA,

JUDGE

03/04/2014