



REPUBLIC OF KENYA



KENYA LAW
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Kipkemei v Attorney General & 2 others (Environment & Land Case E015 of 2021) [2022] KEELC 3054 (KLR) (28 April 2022) (Ruling)

Neutral citation: [2022] KEELC 3054 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E015 OF 2021**

EO OBAGA, J

APRIL 28, 2022

BETWEEN

CHEPKWONY KIPKEMEI PLAINTIFF

AND

ATTORNEY GENERAL 1ST DEFENDANT

ELIJAH LIMO 2ND DEFENDANT

JOHN KIPYEGO KENDELE 3RD DEFENDANT

RULING

1. This is a ruling in respect of a Notice of Motion dated 16th March, 2021 in which the Plaintiff/Applicant seeks the following orders:-
 1. That this application be certified urgent and heard exparte in the first instance.
 2. That pending the hearing and determination of this application, this Honourable court be pleased to issue a temporary injunction restraining the Defendants/Respondent's by themselves and/or servants from encroaching into, hiving off, trespassing onto, interfering with and/or in any other way dealing with the parcel of land known as plot No. 2312 Kapkiamo Adjudication Section.
 3. That this Honourable court be pleased to issue a temporary injunction restraining the Defendants/Respondents by themselves, agents, and/or servants from encroaching into, hiving off, trespassing onto, interfering with and/or in any other way dealing with parcel of land known as plot No. 2312 Kapkiamo Adjudication Section pending the hearing and determination of this suit.
 4. That costs of this application be provided for.



2. The dispute herein can be traced to arbitration proceedings which were heard on 11th October, 1979. The proceedings involved the 3rd Defendant who was the Plaintiff. The Defendant was the father of the 2nd Defendant in the present case. The case was ruled in favour of the 2nd Defendant's father. The plaintiff in this case who was not a party to the arbitral proceedings then filed an objection to the Land Adjudication officer against the 3rd Defendant herein. The Plaintiff's objection was dismissed on 26th October, 1989.
3. The Plaintiff then appealed to the minister and his appeal was allowed in a ruling delivered by the Deputy County Commissioner, Baringo North on 6th June 2019. The Plaintiff/Applicant contends that the 1st Respondent has refused to register the Applicant as owner of parcel No. 2312 within Kapkiamo Adjudication section in accordance with the judgment of the minister.
4. The Applicant further contends that the 2nd and 3rd Respondents have encroached on to part of parcel No. 2312 (suit property) and have started laying claim to the same.
5. The 2nd and 3rd Respondents opposed the Applicant's application based on a replying affidavit sworn on 14th August 2012. The 2nd Respondent contends that he is the one who is in possession of the suit property which was originally part of parcel No 1966. The 2nd Respondent states that in 1979, the 3rd Respondent had sued his father whereby the suit property was awarded to the 3rd Respondent.
6. The 2nd Respondent further states that he is occupying the suit property as the same was sold to his father by the Applicant. He goes on to state that the ruling of the minister dated 6th June, 2019 was unfair and was made contrary to the rules of natural justice and that in any case he has been wrongly sued as he is not the administrator of the estate of his late father.
7. The parties were directed to file written submissions. The Applicant filed his submissions on 9th February, 2022. The Respondents did not file any submissions and if any were filed, then they are not in the file. I have carefully considered the Applicant's application as well as the opposition to the same by the 2nd and 3rd Respondents. I have also considered the submissions of the Applicant. The only issue for determination is whether the Applicant has made out a case to warrant issuance of injunction orders.
8. There is no contention that the Applicant's appeal to the minister succeeded. The Applicant was awarded the suit property. The 2nd and 3rd Respondents did not file any Judicial Review Application seeking to have the minister's decision quashed. There was also no Constitutional Petition filed by either the 2nd or 3rd Respondents alleging that their Constitutional rights had been violated.
9. The process by which the Applicant was awarded the suit property is governed by the [Land Adjudication Act](#). There is no evidence that the Minister had transmitted his decision to the Land Registrar Baringo for implementation. There was no evidence shown by way of affidavit to show that the Applicant's trees were cut or that his crops were destroyed.
10. The evidence on record is that the suit property is not developed but it is being cultivated by the 2nd Respondent who started doing so after inheriting it from his late father. This being the case, I do not see what prima facie case the Applicant has to warrant issuance of an injunction. In fact the Applicant's application is premature if the letter of 1st July 2020 annexed to the affidavit of the 2nd and 3rd Respondents is anything to go by. The Land Adjudication and settlement officer has not received any verdict from the minister for implementation. This court cannot therefore issue injunctive orders in the circumstances.



11. From the above analysis, I find that the application for injunction is misconceived. The same is hereby dismissed with costs to the 2nd Respondent as the 3rd Respondent disowned the affidavit sworn without his authority.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 28TH DAY OF APRIL, 2022.

E. OBAGA

JUDGE

In the virtual presence of:-

Ms. Rutto for 1st Defendant.

Ms. Cheruiyot for Mr. Mwaita for 2nd Defendant.

Ms. Mitei for Mr. Ngigi for Plaintiff/Applicant.

Court Assistant –Albert

E. OBAGA

JUDGE

28th APRIL, 2022

