



**REPUBLIC OF KENYA**

**High Court at Eldoret**

**Environmental & Land Case 695 of 2012**

**DINAH JEPCHIECH CHEPYEGON.....PLAINTIFF**

**VS**

**KEVIN KIPTANUI KIMWATAN & 4 OTHERS ..... DEFENDANTS**

**RULING**

***(Application for injunction; principles to be applied in an application for injunction; applicants registered owners of suit properties; claim that the defendants have unlawfully interfered with possession of the plaintiffs; no response to application; application unopposed; application for injunction allowed)***

The application before me is the Motion dated 17 January 2013 filed by the plaintiffs. It is an application brought under the provisions of Order 40 Rule 1 and 4 of the Civil Procedure Rules and Sections 1A and 63(c) of the Civil Procedure Act, CAP 21, Laws of Kenya. It is an application seeking injunctive orders against the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants from interfering with the land parcels KARUNA/KARUNA BLOCK 1 (CHEBONET) 49 and KARUNA/KARUNA BLOCK 1 (CHEBONET) 52, pending the hearing and determination of the main suit.

The history of this matter is that the plaintiffs initially filed suit against the 1<sup>st</sup> defendant (as sole defendant) to this suit. It was the plaintiffs' case that the defendant had interfered with their possession of the two parcels of land which are the subject matter of this suit. The plaintiffs alongside the plaintiff filed an application for injunction against the sole defendant and vide an order issued on 9/11/2011 the plaintiffs were granted the injunction sought. After being granted the orders of injunction, the plaintiffs filed an application dated 10<sup>th</sup> April 2012 seeking an order to amend the plaint to include the 2<sup>nd</sup> to 5<sup>th</sup> defendants and in the same application also sought orders of injunction against the said 2<sup>nd</sup> to 5<sup>th</sup> defendants. In a ruling delivered by my sister The Honorable Justice Mshila, only the application for amendment was granted with the applicant being advised to file an application for injunction after filing the amended plaint. The amended plaint was duly filed on 17 January 2013 and simultaneously with the amended plaint, this application for injunction was filed.

The 2<sup>nd</sup> to 5<sup>th</sup> defendants were duly served with the application and summons to this suit but they have neither filed appearance, defence, nor a response to this application. This application for injunction is therefore not opposed.

It is the plaintiffs' contention that they are the owners of the two suit lands namely KARUNA/KARUNA BLOCK 1 (CHEBONET) 49 and 52. It is deponed that the 2<sup>nd</sup> -5<sup>th</sup> defendants have without colour of right entered the suit land and ploughed a portion of it. The plaintiffs have deponed that their efforts to stop them have been futile hence this application. In the amended plaint, the plaintiffs have sought for orders of permanent injunction to restrain the defendants from interfering with the suit lands. The plaintiffs in their supporting affidavit have annexed copies of titles to the two suit lands indicating that they are the registered owners thereof. As registered owners, they are entitled to utilize the suit lands without interference from the defendants who have not established any competing right to the suit lands.

In the premises, I do allow this application and issue orders restraining the 2<sup>nd</sup> -5<sup>th</sup> defendants from entering upon, ploughing, planting, trespassing, or in any other way dealing with the land parcels KARUNA/KARUNA BLOCK 1 (CHEBONET) 49 and KARUNA/KARUNA BLOCK 1 (CHEBONET)

52 pending the hearing and determination of this suit. Costs of the application shall be costs in the cause.

It is so ordered.

**DATED AND DELIVERED THIS 5<sup>TH</sup> DAY OF FEBRUARY 2013.**

**MUNYAO SILA**

**JUDGE ENVIRONMENT & LAND ELDORET**

Delivered in the presence of  
Mr. A.T. Kiboi for the plaintiffs/applicants  
No appearance for the defendants.