



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CIVIL SUIT NO. 86 OF 2010.

JANE KANDA KIPKORIR ::: PLAINTIFF.

VERSUS

DORCAS CHEBET)

MR. KUNDU)

JEREMIAH JOHANA) ::: DEFENDANTS.

JOHNATHAN KAPKOKE)

KIPKORIR KIPKALA)

LUKA CHEBET)

RULING.

The applicant herein Dorcas Jepkemoi Chebet brought an application dated 21/3/2011 seeking the following prayers:-

1. *That leave be granted to the applicant to substitute the name of Luka Chebet, the 6th defendant herein with his legal representative Dorcas Jepkemoi Chebet who has now taken letters of administration as the legal representative of his estate.*
2. *That the Honourable court be pleased to lift and set aside the injunction order issued on 22/12/2010 against the defendants herein.*
3. *That the plaint and the suit herein be struck out with costs.*
4. *That the costs of the application be provided for.*

The application is supported by the supporting affidavit of the applicant sworn n 17th March, 2011. The applicant contends that she is the legal representative of the estate of her late husband Luka Chebet who died on 12/1/2009. Her deceased husband was owner of plot No. 1527 Milimani Settlement Scheme Trans Nzoia. Sometime in 2005, the plaintiff/respondent started claiming that the land on which she was utilising belonged to her and that it was plot No. 1615. She reported the plaintiff/respondents claims to the area chief who wrote a letter warning the plaintiff from interfering with the piece of land. The plaintiff/respondent went away until the year 2010 when she came back after the demise of the applicant's husband and started claiming the land based on an injunction issued in respect of plot No. 1615. She contends that the respondent is claiming that her plot No. 1615 lies between plot No. 1527 and 1528 and the applicant's contention is that there is no plot existing between plot No. 1527 and 1528. She contends

that the injunction was issued based on material non disclosure and that the same ought to be discharged.

The application was opposed by the respondent based on her replying affidavit sworn on 5/7/2011. She however conceded to the applicant's first prayer for substitution. The respondent contends that plot No. 1615 exists and that she was shown its physical location by the surveyors. She contends that it is actually the applicant who is out to interfere with the survey work on the ground.

I have considered the applicant's application as well as the objection to the same by the respondent. I have also considered the submissions filed by the counsel for the parties herein.

The applicant is seeking orders discharging the injunction orders issued on 22/12/2010. The applicant has not come out clearly on why she wants the injunction orders discharged. She seems to be complaining that the respondent is using orders of injunction granted in respect of plot No. 1615 to harass her on plot No. 1527. There is nothing which has been put forth to show that this is the position.

The documents annexed to the replying affidavit of the respondent show that the issue between the applicant and the respondent is of a boundary dispute. Contrary to the applicant's contention that plot No. 1615 is non-existent, communication from the Lands office shows that the plot indeed exists and what was in issue is on the boundaries of the plots in issue. There is no basis at all shown why the injunction orders should be discharged.

The applicant also seeks to have this suit struck out on the ground that the same is an abuse of the process of court. The applicant has not made any attempt to show that this suit is an abuse of the process of the court. It is in fact the applicant's application to have it struck out which is an abuse of the process of the court. The applicant has made generalized allegations which are unsubstantiated.

The plaintiff/respondent's suit is not hopeless. The same cannot be struck out. The upshot of this is that prayer 2 and 3 of the applicant's application are hereby dismissed. The only prayer which has been granted is prayer (1) which seeks to substitute the 6th defendant with the applicant herein. I make no order as to costs.

It is so ordered.

[Dated, signed and delivered in open court on this 31st day of July, 2013.]

E. OBAGA.

JUDGE.

In the presence of Mr. Bundi for plaintiff.

Court Clerk – Rumaita.

E. OBAGA.

JUDGE.

31/7/2013.