

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E&L 385 OF 2013

FLORENTINA KIMOI KIMUTAI & ANOTHER.....PLAINTIFFS

VS

FRANCIS CHUMA.....DEFENDANT

RULING

The application before me is the application dated 9 July 2013 filed by the plaintiffs. It is an application brought under the provisions of Order 51 of the Civil Procedure Rules and Section 1A, 3 and 3A of the Civil Procedure Act and all enabling provisions of the law. In the said application, the plaintiffs seek orders of injunction to restrain the defendant from effecting the burial of the late Tarkok Tapkurkor on the land parcel Kiplombe/Kuinet Block 8 (Kapegetet) /7 pending the hearing and determination of this suit. The said application is supported by the affidavit of the first plaintiff.

Despite being served with the application, the defendant never filed any response to the same. Neither has the defendant entered appearance nor has he filed a statement of defence despite being served with summons. The application is therefore uncontested by the defendant.

The 1st plaintiff is the wife to one John Kimutai Cosmas (deceased). Cosmas died in the year 2006. The 2nd plaintiff is the son to the late Cosmas. The suit land Kiplombe/ Kuinet Block 8 (Kapegetet)/7 is registered in the name of Cosmas and it is deponed that the same is under the management of the plaintiffs.

It is averred that Tarkok Tapkurkor (deceased) was residing on the suit land as a trespasser and she died on 3 July 2013. The defendant is the son of the late Tarkok. It is further averred that the defendant now wants to bury Tarkok on the suit land without any colour of right. It is for that reason that the plaintiffs want the defendant stopped from interring the late Tarkok on the suit land. It is further stated that the late Tarkok has her ancestral home in Ngechek, Nandi which is distinct from the suit land. The plaintiffs have averred that they have offered to shoulder some expenses to facilitate the interment of the late Tarkok on her land in Ngechek but the defendant has refused and insisted on interring the late Tarkok on the suit land.

In the plaint, the plaintiffs have sought inter alia declaratory orders that the plaintiffs are the legal owners of the suit land and that the defendant is a trespasser. They have also sought orders of permanent injunction to restrain the defendant from interring the late Tarkok on the suit land. In addition they have sought orders to have the defendant evicted from the suit land.

The facts as alluded by the plaintiffs have not been contested by the defendant. I am not sure whether the plaintiffs have letters of administration, and it could be that their capacity to institute this suit, if the same is being instituted on behalf of the estate of Cosmas, is questionable. Nevertheless, I am of the view that the plaintiffs have demonstrated prima facie that the defendant has no colour of right to inter the late Tarkok on the suit land. In the event that the late Tarkok is interred on the suit land, it will no doubt be a difficult, if not a traumatizing task, to conduct an exhumation. I think it is best that I stop the interment of the late Tarkok on the suit land pending the hearing of this case, which ought to be heard and determined on a priority basis. The defendant can then have opportunity to demonstrate why he ought to be allowed to bury the late Tarkok on the suit land.

For the above reasons, I do issue an order of injunction restraining the defendant from interring the late

Tarkok on the land parcel Kiplombe/Kuinet Block 8 (Kaplegetet)/ 7 pending the hearing and determination of this suit. The costs of this application shall be costs in the cause. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 24TH DAY OF JULY 2013

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Read in open Court

In the Presence of:-

Mr. G. Tarus present holding brief for Mr. Kirwa for the Plaintiff.

N/A for the defendant who has not entered appearance