

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L NO. 395 OF 2013

BENJAMIN BUSIENEI.....PLAINTIFF

VS

THE CHAIRMAN KESSES

KELJI FARM & 2 OTHERS.....DEFENDANT

RULING

The application before me is an application for injunction filed by the plaintiff pursuant to the provisions of Order 40 of the Civil Procedure Rules, 2010.

It is the case of the applicant that her husband, one Kipsum arap Mugun (now deceased) was a beneficiary of shares equivalent to 20 acres of land situated in the 2nd defendant's farm known as Kesses Kelji Farm, L.R No. 9621. Upon acquisition, the deceased settled his family on the land. The plaintiff has now averred that the 1st defendant has threatened to dispossess the plaintiff of the suit land without any colour of right. She has also averred that the 3rd and 4th defendants have threatened to take portions of the suit land. In her suit, she has asked for a permanent injunction to restrain the defendants from interfering with the suit land. In this application, she has asked that the defendants be restrained from interfering with her possession of the suit land pending hearing and determination of this suit. To her supporting affidavit, the plaintiff has annexed a grant of letters of administration ad litem, and a register of Kesses Kelji Farm, to support her averments that the deceased was a member of the farm and had shares in it.

Only the 1st defendant swore a Replying Affidavit to oppose the application. He averred that the deceased had no land or shareholding in Kesses Kelji Farm. He deponed that the family of the deceased live in Kesses Kelji Farm by virtue of his (1st defendant's) shareholding and that he had only invited the deceased to occupy his land. He has stated that he put up structures on the land and that even the house which the plaintiff occupies is owned by the 1st defendant.

At the hearing of the application, only Ms. Kipseei for the applicant appeared. There was no appearance on the part of the 1st respondent. The 2nd respondent was present, acting in person, but he had not filed a replying affidavit nor grounds of opposition, and even when I invited him to make submissions on the application, he stated that he has nothing to say and left it to court.

I have considered the matter herein. I have seen that the plaintiff annexed a copy of a register, said to be the register of Kesses Kelji Farm. I have seen the name of Kipsum Mugun and against his name is 17 acres. I have also seen the name of the plaintiff who is said to be entitled to 2 acres. Although the 1st defendant has denied that the deceased was a member of Kesses Kelji Farm, I think prima facie, there is some evidence that shows that he was a member and that he was entitled to the land.

The principles for the grant of an injunction were laid out in the case of *Giella v Cassman Brown (1973) EA 358*. In the case, it was stated inter alia that the applicant must demonstrate a prima facie case, and if in doubt the court ought to decide the matter on a balance of convenience. I think the plaintiff has demonstrated a prima facie case especially because I have seen a copy of the register indicating that the deceased and the plaintiff were members of Kesses Kelji Farm and that they own some land in it. I also think that the balance of convenience tilts in favour of the applicant who is in possession of the land.

I therefore issue an order of injunction, restraining the defendants from interfering with the plaintiff's

possession of the 20 acres of land claimed on behalf of the estate of Kipsum arap Mugun, until the hearing and determination of this suit. The defendants are also restrained from selling, leasing, charging, or in any other way dealing with the suit land until the final determination of this suit.

The costs of the application shall be costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 15TH DAY OF OCTOBER 2013

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Read in open Court

In the Presence of:-

Mr. E.M. Momanyi for the 1st defendant